

EXHIBIT 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: §
HIGHLAND CAPITAL § Chapter 11
MANAGEMENT, L.P., § Case No. 19-34054-sgj11
Reorganized Debtor. §

DEPOSITION OF DUSTIN NORRIS AND 30(b)(6) OF
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,
AND NEXPOINT ADVISORS, L.P.

Dallas, Texas

Friday, March 4, 2022

(REPORTED REMOTELY)

REPORTED BY:

Linda Russell, CSR

JOB NO: 207400

NORRIS

March 4, 2022

9:33 a.m.

DEPOSITION OF DUSTIN NORRIS, conducted via
Zoom, taken before Linda Russell, Certified Court
Reporter No. 2965, pursuant to the Federal Rules of
Civil Procedure for the United States District
Court pertaining to the taking of depositions,
commencing at 9:33 a.m. Central Time, on
March 4, 2022.

NORRIS

A P P E A R A N C E S

(Attendees appearing via remote videoconference)

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ADVISORS, L.P. AND NEXPOINT ADVISORS, L.P.

DAVOR RUKAVINA, ESQ.

THOMAS BERGHMAN, ESQ.

Munsch Hardt Kopf & Harr

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ALSO PRESENT:

La Asia Canty, Paralegal

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1 NORRIS

2 P-R-O-C-E-E-D-I-N-G-S

3 COURT REPORTER: My name is Linda
4 Russell. I am a certified court reporter in
5 association with TSG Reporting, Inc.

6 Today's date is March 4, 2022, and
7 the time is 9:33 a.m. Central Time.

8 Due to the severity of COVID-19 and
9 following the practice of social distancing, I
10 will not be in the same room with the witness but
11 will record this deposition remotely and will
12 swear the witness remotely.

13 Do all parties stipulate to the
14 validity of the remote recording and remote
15 swearing and that it will be admissible in the
16 courtroom as if it had been taken following
17 Rule 30 of the Federal Rules of Civil Procedures
18 and/or the State's rules where this case is
19 pending?

20 MR. RUKAVINA: The Advisors so
21 stipulate.

22 MS. WINOGRAD: Highland stipulates as
23 well.

24 DUSTIN NORRIS,
25 having sworn or affirmed to tell the

1 NORRIS

2 truth, the whole truth and nothing but the
3 truth was examined and testified as
4 follows:

5 EXAMINATION

6 BY MS. WINOGRAD:

7 Q. Good morning, Mr. Norris. My name is
8 Hayley Winograd, I'm an attorney at the law firm
9 of Pachulski Stang Ziehl & Jones, and I'll be --
10 I'll be taking your deposition today. We
11 represent Highland Capital Management, LP. Do
12 you understand that?

13 A. Yes.

14 Q. Okay. And do you understand that
15 you're going to be deposed today in your capacity
16 as a 30(b)(6) witness on behalf of NexPoint
17 Advisors, LP?

18 A. I do.

19 Q. And can we refer to NexPoint Advisors
20 as NexPoint?

21 A. Yes.

22 Q. And you also understand that you are
23 going to be deposed in your 30(b)(6) capacity for
24 the entity Highland Capital Management Fund
25 Advisors, LP, right?

1 NORRIS

2 A. Yes.

3 Q. And can we refer to that entity as
4 HCMFA?

5 A. Yes.

6 MR. RUKAVINA: I'm sorry, I can
7 barely hear you, Dustin.

8 Can you hear him, Hayley, just fine?
9 Dustin, just say --

10 MS. WINOGRAD: I don't think -- can
11 you --

12 THE WITNESS: Can you hear me -- if I
13 speak louder, is that better?

14 MR. RUKAVINA: Yeah, that's better.

15 MS. WINOGRAD: That's better.

16 BY MS. WINOGRAD:

17 Q. I'm also going to ask that when I ask
18 you a question, you just wait for me to finish
19 the question before you begin your answer. Is
20 that fair?

21 A. Yes.

22 Q. Okay. And I'm going to be -- we're
23 going to be putting up documents on the screen
24 from time to time, so if you need to see any
25 other portion of the document in order to give a

NORRIS

more complete answer, just let us know.

A. Okay.

Q. And if you need me to repeat a question if you can't hear me, just ask me, and I can repeat it.

Okay. I'm going to ask my colleague Ms. La Asia Canty to please put Exhibit 1 on the screen.

(Exhibit 1 marked for identification.)

BY MS. WINOGRAD:

Q. Okay. Mr. Norris, have you seen this document before?

A. Yes.

Q. Okay. Do you understand that your answers as the Advisors' corporate representative will be binding on the Advisors?

A. I do.

Q. And that every time I ask you a question, it will be in your 30(b)(6) capacity as a witness unless I say otherwise?

A. Yes.

Q. And can you -- can you testify that you -- can you confirm that you're prepared to testify on all of the topics set forth therein?

NORRIS

A. Yes, I've -- I have spent time preparing, and I would note that there is a number of discovery items ongoing. We have not deposed Mr. Waterhouse. We haven't deposed Mr. Klos as well as Mr. Seery. And we haven't had access to Mr. Waterhouse.

So with that, yes, I've done the best that I can in preparing and spoken to a lot of people and then prepared to answer the questions to the best of my ability.

Q. Okay. Who did you speak to in preparing?

A. Yeah, so obviously spoke with outside counsel, with Davor and his counterparts. I spoke with our in-house general counsel, which is DC Sauter. Spoke with Mr. Dondero. I spoke with Brian Collins, who's former HR director at Highland, now Skyview. Spoke with Stephanie Vitiello who is chief compliance officer of our Advisors. And also spoke with Kevin Fullmer who's on our product strategy team. Brian Mitts over time as well. Brian Mitts, he's involved in our Advisors. And I think that's most of who I spoke with.

NORRIS

Q. Okay. And did you review any documents in preparing?

A. I did, yeah. I reviewed all of the filings, complaints, responses. I reviewed the Shared Services Agreements, the Payroll Reimbursement Agreements. I reviewed your notice. I reviewed documents that had been provided in discovery from Highland that my attorneys provided me. Emails, calculations that Mr. Klos and Mr. Waterhouse prepared. I reviewed emails that were responsive that I could try and find within my system. I searched our document drive to find responsive documents, and so reviewing quite a bit of material that I could.

Q. Do you have a title at NexPoint?

A. I do.

Q. What is that title?

A. Yeah, executive vice president --

Q. Okay.

A. -- of NexPoint.

Q. How long have you held that title?

A. I believe it was in 2018 or 2019 that I became executive vice president.

Q. Okay. So was it like -- was it the

NORRIS

end of 2018?

A. I can't remember the specific date.

Q. Okay. Do you have a title at HCMFA?

A. Yes, the same, executive vice president.

Q. Okay. And how long have you held that title?

A. Probably the same amount of time.

Q. Okay.

A. And I also function as -- my operating role is to lead head of distribution and chief product strategist. So that's my title that I also operate under. As an officer of the Advisors, it's executive vice president.

Q. Got it. And who is your employer now?

A. So NexPoint Advisors.

Q. So they pay you?

A. They do.

Q. And who do you -- do you report to somebody at NexPoint?

A. Jim Dondero.

Q. Okay. So who controls the Advisors today?

NORRIS

A. I think it's been clear in the record Mr. Dondero owns and has controlling interest in the Advisors.

Q. Okay. And when were the Advisors formed?

A. NexPoint Advisors I believe was 2011, maybe 2012. And Highland Capital Fund Advisors was formerly known as Pyxis Capital. Prior to that name change was Highland Funds Asset Management. I don't know the specific date, but it's been over a decade ago that HCMFA was formed.

Q. And James Dondero controlled the Advisors since they were formed, right?

A. I'm not sure on the total history.

Q. Were they created at his direction?

A. I don't know -- I don't know the background of the formation other than, you know, there was -- when they worked for him, there was a number of independent boards involved. These Advisors are Advisors of '40 Act funds. There was a number of counsel in the discussion. So it was at the direction, I believe, of counsel and several of the parties involved.

NORRIS

Q. But James Dondero was involved with the formation, right?

A. I would assume so, but I'm not sure.

Q. So the Advisors are registered investment Advisors, right?

A. That's correct.

Q. Okay. And so in this role they provide advisory service to certain funds, right?

A. Funds and other entities, yeah. Publicly traded REITs, private REITs, private placement vehicles. So funds and other vehicles, investment vehicles.

Q. Okay. Can we call these -- they are retail funds, though, right?

A. Largely, yes.

Q. So moving forward, can we refer to these as "the funds"?

A. That's fine.

Q. And the Advisors provide these advisory services to the funds pursuant to certain written agreements, right?

A. Correct.

Q. And these are investment advisory agreements, right?

NORRIS

A. Correct.

Q. And these agreements are among the most important agreements that the Advisors have, right?

A. Yes, among the most important.

Q. And the reason for the Advisors' existence is to service those funds, right?

A. Yes.

Q. So the funds are the principal source of the Advisors' revenue, then, right?

A. That's correct.

Q. Okay. So other than to service the retail funds, there is no other reason for Advisors' existence, right?

A. The Advisors do have some investments on their balance sheet, right. So to say the only reason, there's -- that's the principal reason.

Q. That's the principal one. Okay.

So in your individual capacity, are you an officer of any of the funds?

A. I am.

Q. Okay. What's your title?

A. So for our '40 Act mutual funds,

NORRIS

closed-end funds, I am the executive vice president. I don't hold a title for our REITs which are other entities advised by NexPoint.

Q. Okay. But the retail funds that we talking about which we refer to as the funds, you hold title with most of them?

A. Well, I think -- I told you that the funds were -- you referred to the vehicles, which would include the retail funds and other vehicles that I mentioned: REITs, private placements, and other investment vehicles you said, well, can we refer to that as the funds.

So the funds is encompassing. There's an aspect of it that's -- the '40 Act registered funds I'm an officer of. So that's the funds.

Q. Okay. So the retail funds, though, are the funds that the Advisors provided these investment services to?

A. That's some of what they provided investment services. They also provide investment services to REITs, which are publicly listed, some are private, some are other vehicles.

NORRIS

Q. But when you said that the principal source -- the principal reason that the Advisors exist is to provide the investment advice to the funds. I was talking about the retail funds.

A. Got it. So if you were talking about the retail funds, my understanding was you define that as the funds as a whole, all of those investment vehicles. So if it's just the retail funds, there is a lot of other things we provide, which is publicly traded REITs which is material part of the assets we manage, there is private vehicles, there is -- and so there is -- there is -- but those are all investment vehicles.

Q. Okay. But those -- those other vehicles that you mentioned, the Advisors aren't performing the services pursuant to those written contracts, right?

A. They are pursuant -- they are using them -- they are managing them pursuant to written investment advisory contracts. They are different contracts. Each entity has an investment advisory agreement with the Advisors, one of or both of the Advisors.

Q. Okay.

1 NORRIS

2 MS. WINOGRAD: Can we please pull up
3 Exhibit 54, La Asia.

4 (Exhibit 54 marked for identification.)

5 BY MS. WINOGRAD:

6 Q. Okay. Mr. Norris, do you see this
7 document?

8 A. I do.

9 Q. Okay. Do you recognize it?

10 A. I do.

11 Q. Is this an original Shared Services
12 Agreement between Highland and an entity that you
13 mentioned earlier, Pyxis Capital, LP?

14 MR. RUKAVINA: Objection. Form.

15 A. I don't know if it's an original, but
16 it is an Investment Advisory Agreement dated
17 effective December 15th, between Pyxis Capital,
18 formerly known as Highland Funds Asset
19 Management, which I waked through earlier when
20 they changed its name. And I don't know if this
21 is the original or if it's -- it doesn't say
22 amended. So it's Shared Services Agreement.

23 BY MS. WINOGRAD:

24 Q. It's a Shared Services Agreement,
25 though. Okay. And did Pyxis Capital, LP turn

NORRIS

into HCMFA by name?

A. It did, yes, in February 2013, I believe.

MS. WINOGRAD: Okay. La Asia, can we now put Exhibit 55 on the screen, please?

A. And by "turn into" -- you said "turn into." It's really the name change.

BY MS. WINOGRAD:

Q. The name change, yeah.

A. It was simply a name change.

Q. Okay. Thank you for clarifying.

(Exhibit 55 marked for identification.)

BY MS. WINOGRAD:

Q. And then this is an Amended and Restated Shared Services Agreement between Highland and Pyxis Capital, LP, right?

A. 12th day of September 2012. That's what it says, yes.

Q. And it's effective as of December 15th, 2011, right?

A. Yeah, which is just the original date on the last agreement.

Q. Okay.

A. Since it's amended and restated.

1 NORRIS

2 MS. WINOGRAD: Okay. And then,
3 La Asia, if we could put up Exhibit 2 now.

4 (Exhibit 2 marked for identification.)

5 BY MS. WINOGRAD:

6 Q. Do you recognize this agreement?

7 A. I do.

8 Q. This is the Second Amended and
9 Restated Shared Services Agreement between
10 Highland and HCMFA, right?

11 A. Right.

12 Q. And this is the amendment to the
13 earlier Shared Services Agreements we just looked
14 at, right?

15 A. It's a amendment. I don't have
16 knowledge if there was one in between, but this
17 is a amendment. Since it says "Second," I would
18 assume that's the second amended and restated. I
19 don't know if there was another amended, but this
20 is the second amended and restated.

21 MS. WINOGRAD: Okay. Can we please
22 scroll to page 11.

23 BY MS. WINOGRAD:

24 Q. This was signed by James Dondero on
25 behalf of Highland, right?

NORRIS

A. It appears so. It says James Dondero on the signature block.

Q. And it's on behalf of HCMFA, right?

A. It's by Strand Advisors, its general partner of HCMFA, yes.

Q. But that's Brian Mitts' signature, right?

A. It looks like Brian Mitts' signature, and it says Brian Mitts there. So I would assume it's his signature.

MS. WINOGRAD: And, La Asia, if we could just go back to the first page, please.

BY MS. WINOGRAD:

Q. This Second Amended and Restated Shared Services Agreement became effective February 8th of 2013, right?

A. Yes, that's what it says. Entered into to be effective as of the 8th day of February 2013, which was the time of the name change, I believe, to Pyxis Capital -- or sorry, Pyxis Capital to HCMFA.

Q. Okay. So under this Shared Services Agreement, the Advisors who were at HCMFA agreed to pay Highland for the actual cost incurred from

NORRIS

certain back and middle office services, right?

A. If you want to scroll down and point to the section --

Q. We can go to --

A. I believe this was an actual cost plus a margin amount of 5 percent.

Q. Okay. So who -- do you know who drafted this?

A. I don't.

Q. Okay. Do you know if this was the subject of negotiation?

A. It was definitely -- when you -- when you look at all of the Shared Services Agreement, there was negotiation. As I mentioned, outside legal counsel involved. There was a Board of Directors of the retail funds that was involved. So there was definitely an extensive process that went into this.

In this one in particular, I would have to look. I don't know if there is any significant changes between the first and the second. Maybe you could tell me, but I believe this one is just the name change on this -- this document right here.

NORRIS

Q. Okay. So did HCMFA have its own counsel in the drafting of this agreement, if we're just considering the original agreement, the first one that we looked at?

A. There was -- there was -- HCMFA carried its own Advisor counsel, and the Board of Directors has an independent counsel. And there was definitely outside counsel involved.

Q. Okay. Did Highland have its own outside counsel separate from HCMFA's outside counsel?

A. I'm not sure. Again, this was over a decade ago, and these agreements have been -- they've been in place a very long time. But there was a lot involved here, and it was an extensive discussion and conversation.

Q. Okay.

A. So I -- but, again, the original agreement for Highland Funds Asset Management was sometime before 2012, so over a decade ago.

MS. WINOGRAD: Okay. La Asia, can we please look at Exhibit 29.

(Exhibit 29 marked for identification.)

BY MS. WINOGRAD:

NORRIS

Q. Okay. Mr. Norris, do you recognize this document?

A. Yes.

Q. Can you confirm this is the Shared Services Agreement between NexPoint and Highland?

MR. RUKAVINA: Well, in fairness, scroll down, Dustin, if you need to, or Hayley can represent that it's a full and, you know, correct --

THE WITNESS: Yeah, if you could scroll down. Keep going. Scroll back up -- actually, no, keep going. Yeah.

MS. WINOGRAD: Yeah, we can scroll all the way to -- if we can go to page 11. Yeah, there we go.

BY MS. WINOGRAD:

Q. So you agree this was signed by James Dondero on behalf of both NexPoint and Highland, right?

A. That appears to be his signature and the signature block looks to -- it says James Dondero, at least on the Highland one. It doesn't have his name written, but it does look like his signature. The bottom one just says

NORRIS

NexPoint Advisors and it says general partner and I would say those signatures look pretty close, but there is no name or title written.

Q. Okay. So do you know if this agreement was subject to any negotiation?

A. Yes, just like the HCMFA agreements, there was detailed discussion, conversations. And a big aspect of this is the retail board's consideration was services provided couldn't be -- between Advisors or affiliated Advisors couldn't be a profit there. And so a big part of that negotiation was it needed to be a cost plus-type arrangement where there was a reimbursement, not a payment or a profit center for an affiliated Advisor.

Q. So was this the subject of negotiation, yes or no?

A. Yes, there was definitely negotiation. There was outside counsel involved. There was extensive discussion. There was an independent board.

Q. Who represent -- did somebody represent NexPoint when the agreement was negotiated?

1 NORRIS

2 A. Yes, I believe so --

3 MR. RUKAVINA: Hold on, Dustin. Just
4 objection. Form.

5 Go ahead and answer.

6 A. I don't know specifically. Again, it
7 was over a decade ago. But as I mentioned, there
8 was outside counsel involved. There was board
9 counsel. There was an independent board.

10 BY MS. WINOGRAD:

11 Q. So do you -- so you don't -- I just
12 want to make sure I have the answer. So you
13 don't know if Highland and NexPoint had separate
14 counsel when this agreement was entered into at
15 the time?

16 A. Generally -- generally Highland and
17 the retail advisors had different counsel and
18 there was an offsetting, but I don't know
19 specifically on this.

20 Q. You don't know if they did with this
21 agreement, right?

22 A. I don't know.

23 Q. Okay. So this agreement was amended
24 in 2018, right?

25 A. I believe that's the case. You have

NORRIS

an amended 2018 agreement?

MS. WINOGRAD: Yeah, La Asia, can we go ahead and show Exhibit 3, please.

(Exhibit 3 marked for identification.)

BY MS. WINOGRAD:

Q. Okay. Do you recognize this?

A. I do.

Q. Okay. So this is the Amended and Restated Shared Services Agreement between NexPoint and Highland, right?

A. It looks to be, yes.

Q. Okay. And it's effective January 1st of 2018, right?

A. Dated effective January 1st, 2018.

Q. Uh-huh. And this was an amendment to the Shared Services Agreement that we just looked at, right?

A. It doesn't reference -- whereas the parties enter into a certain Shared Services Agreement effective January 1st, the original agreement.

So it appears to be that's the same agreement.

Q. Okay. Great.

1 NORRIS

2 MS. WINOGRAD: Could we scroll to
3 page 19, please.

4 BY MS. WINOGRAD:

5 Q. Okay. So this was signed by Frank
6 Waterhouse on behalf of both NexPoint and
7 Highland, right?

8 A. I don't -- again, just looking at the
9 signatures, I see Frank's name there but don't
10 have any evidence, you know, that Frank actually
11 did sign. In addition, I would also clarify in
12 all this that we will be deposing Frank. And we
13 haven't had access to Frank in preparation for
14 this.

15 Q. Okay. I'm just going to have you try
16 to listen to the questions I'm asking and answer
17 those specific questions to the best of your
18 ability.

19 At the time this agreement was
20 entered into, was Frank Waterhouse the treasurer
21 of NexPoint?

22 A. I don't know. It says it on there,
23 but I'm not -- I'm not certain.

24 Q. Okay. So under the NexPoint -- under
25 this NexPoint Amended and Restated Shared

NORRIS

Services Agreement, the Advisors agree to pay Highland for its middle and back office services in the amount of \$168,000 per month, right?

MR. RUKAVINA: Objection to the extent it calls for a legal conclusion.

A. Can you repeat your question, please.

BY MS. WINOGRAD:

Q. So the Advisors agreed to pay Highland \$168,000 per month for Highland's back and middle office services, right?

MR. RUKAVINA: Objection. Legal conclusion.

A. Can you scroll to the section where it actually shows what was agreed upon?

MS. WINOGRAD: La Asia, could we scroll up a little bit, maybe to the first page.

Okay. So go down a little bit. Keep scrolling, please.

Okay. Sorry. Go to the top of page 4.

MR. RUKAVINA: Hayley, can we open this in the Chat, and then Dustin and I can look at it and move around? I don't know how that works.

1 NORRIS

2 MS. WINOGRAD: I think for now we'll
3 just look at the screen so that I can make sure
4 I'm on the same part as you guys.

5 THE WITNESS: And I might have this
6 agreement up on my desk. Hold on.

7 MS. CANTY: I've been putting all the
8 exhibits in the Chat.

9 MR. RUKAVINA: Oh, I know, but I just
10 don't know how to use it, honestly. I guess I
11 can click Chat and see.

12 MS. WINOGRAD: Okay. Can you scroll
13 up a little bit, please. Okay. Just down. I
14 want to get to Article 2. So the bottom of that
15 page. Okay. Right there.

16 BY MS. WINOGRAD:

17 Q. Do you see under Article 3,
18 Section 2.02(a), that says back and middle
19 office, right?

20 A. It does say back and middle office.

21 Q. Okay. Let's stay there for a second.
22 And it says "assistance and advise with respect
23 to back and middle office functions including but
24 not limited to," and then it goes on to list a
25 number of services, right, if we scroll down a

NORRIS

little bit?

A. Investment research, trade desk services, yeah, yeah, yeah, it goes on and on, yes.

Q. Okay. So it's fair to say that based on the terms of the agreement NexPoint was paying Highland for back and middle office services, right?

A. That was the general -- yes, this was shared services, primarily back and middle office services provided to NexPoint Advisors.

Q. Okay. How was the \$168,000 a month -- how was this -- how was this figure of \$168,000 arrived at?

A. Yeah, on this one, our -- in preparation for this I prepared by, as I mentioned, talking to a lot of different people. The people involved in creating that calculation were Dave Klos and Frank Waterhouse and the accounting teams under them. And so we haven't had access to either of them and so we don't -- we don't know specifically on this \$168,000 how it was calculated.

Q. Okay.

NORRIS

A. But we expect to ask Mr. Waterhouse and Mr. Klos on that in their deposition, and we'll get more information from them.

Q. Okay. So I just want to make sure I have this straight. So as the 30(b)(6) representative for NexPoint, you don't understand how certain terms of this Agreement came into existence?

A. As a 30(b)(6) witness, I did all of the diligence that I could leading up to this to determine that, but didn't have access, and discovery is ongoing. So we do believe that we will be able to get answers on that --

Q. I just asked a yes-or-no question. So I just wanted to make sure the answer was no, you didn't know?

A. Can you ask your original question again?

Q. I said as a 30(b)(6) witness for the -- for NexPoint Advisors, you don't understand how certain terms in this agreement were arrived at?

A. I understand how the terms generally, but I don't -- again, I did all my research as a

NORRIS

30(b)(6) witness, and a key component of this is people involved, we haven't had access to in preparation.

Q. Let me rephrase the question. In your individual capacity holding the title as executive vice president of NexPoint, you don't understand how the \$168,000 figure was arrived at in this agreement that NexPoint was a party to?

A. No, in my individual capacity as executive vice president, my job was not the responsibility of calculating payments, doing back office and middle office services. It wasn't agreements. It wasn't legal services. In fact, we had outsourced and relied on Highland for those specific services. We had outsourced accounting, legal services, calculation of these types of things to Highland and relied heavily on them.

I as executive vice president did not have my own separate accounting team. I don't have a legal team, and so that was relied on heavily by --

Q. So the -- so the answer is no?

MR. RUKAVINA: Objection. Form.

NORRIS

BY MS. WINOGRAD:

Q. You don't know as the executive vice president how the \$168,000 was arrived at, yes or no?

A. I said exactly that. But as the executive vice president, that wasn't my responsibility. I don't know in an individual capacity how the \$168,000 was calculated.

Q. And so there is nobody at NexPoint -- at NexPoint who -- who had any involvement in arriving at this \$168,000 number?

MR. RUKAVINA: Objection. Form.

A. So if you look at the officers at that time, Mr. Waterhouse was involved. We had outsourced -- again, NexPoint didn't have an accounting group. And this was created -- this structure was created for efficiency and effectiveness utilizing resources. We weren't paying someone else for additional accounting services, this was done by Highland and NexPoint didn't carry its own account back office and middle office services group to do things like this.

BY MS. WINOGRAD:

NORRIS

Q. Okay. Can I refer to the HCMFA Shared Services Agreement and the NexPoint Shared Services Agreement as the Shared Services Agreement going forward? So if I say that, you will understand what I mean; I'm talking about both of them?

A. That's fine. I know there are different provisions of each of those. They aren't identical. So if you are just referring to the general, that's great, but I do -- I do know there are different provisions.

Q. Okay. So the Shared Services Agreements were both in effect as of early 2013, right?

A. And sometime before that, yes, but as of early 2013, they were both in effect.

Q. Okay. So other than to out- -- so the purpose of these Shared Services Agreements was to outsource certain middle and back office functions, right?

A. The -- yes, to contract to achieve certain back office and middle office functions that the Advisors did not carry in-house.

Q. Okay. And other than to outsource

NORRIS

these certain middle and back office functions,
was there any other purpose of the Shared
Services Agreement?

A. I believe the agreements speak for
themselves for the services included and -- you
know, the services that are in there, that was
the purpose of contracting.

Q. Can you think of any other purpose?

A. Well, here is what I would say -- let
me -- let me go back to the agreement here you
have up. The provision that says back and middle
office, that's 2.02(a). Then you got (b), legal
compliance and risk analysis. Legal compliance
and risk analysis, there is a lot there involved.
Within back office and middle office, it's a very
broad term. But if you look at that, it says
"assistance and advice back and middle office
including but not limited to." And it's a very
broad provision: investment research, trade desk
services --

Q. Okay. Is there any service in the
Shared Services Agreement that you would not
categorize as a back and middle office service?

A. Again, here you separated out back

NORRIS

and middle office, legal compliance, risk analysis. It even says investment research in back and middle office. So I think they're using that term as one point. And then now if you can scroll down past legal compliance, risk analysis. A lot of people would say that's not just back office. I think that's probably why it's a separate function.

Q. So I don't care what a lot of people would say. According to the Advisors, were they categorizing these functions as back and middle office services at the time this agreement was in effect?

A. Well, I don't think (b), (c), (d), and beyond a sub-bullets of (a). So they are separate categories.

Q. Okay. So let's just look at subsection (c), "Tax, assistance an advice with respect to tax audit support, tax planning and tax preparation." Is this a back or middle office function?

A. I think we're splitting hairs here, and I don't think it matters. But there is no defining big B, big M, you know, back and middle

NORRIS

office as a defined term, unless you define (a) -- again, I'm not an attorney and coming up with the interpretation of a meaning in a document, I can't do that.

Q. So was the purpose of the Advisors outsource -- outsourcing these services that are listed in this agreement, were they to enable the Advisors to comply with the Advisors' obligations to the funds?

A. They were a help. They weren't to enable. And maybe backing up, I think it's important to note even before these agreements were in place, there was -- these retail advisors did a lot of this on their own. In fact, I was an accounting manager for the retail advisors doing back office services, including a separate valuation committee. There was essentially a Chinese wall. And we even had separate floors at one point.

And this allowed them to centralize it and to share in those thoughts between the affiliated Advisors. So you weren't duplicating services. So this enabled -- but this does enable the Advisors to -- to perform their

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function under the 1940 Act of providing the services needed.

So it's outsourcing a portion of those services that we would otherwise have to provide. And if there is already a separate group providing those, this created efficiencies.

Q. Let me ask this. If these agreements were not in effect, would the Advisors still have been able to fulfill their obligations to the funds?

A. They would have had to do that through additional employees or other outsourced Advisors or other outsourced services. We outsource a number of things today, and we actually saw this when we transitioned away from Highland. There was a sub-period, it was only a week, but where we had to --

Q. You've answered my question. So I would like to move on now, if that's okay.

A. Yeah, that's great.

Q. Do the Advisors have contracts with anyone other than the funds to provide services?

A. Do our Advisors or -- sorry, can you repeat the question?

NORRIS

Q. Okay. So let me ask it this way. So do the Advisors perform any services to any entities other than the funds through the Shared Services Agreements?

A. Through these Shared Services Agreements?

Q. Yes.

A. These Shared Services Agreements are services that HCMLP is providing to NexPoint Advisors and HCMFA.

Q. Right. And as you said before, it's to enable the Advisors to perform their obligations to the funds, right?

A. Correct.

Q. So do the Advisors perform any obligations to any entities other than the funds?

A. We're talking just the retail funds?

Q. Yes.

A. Meaning any services at all?

Q. Investment advisory services.

A. Yeah, certainly we provide investment advisory services under advisory contracts with publicly traded REITs, private REITs, Delaware statutory trusts that are 1031 DSTs, other

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private placements. You have a couple of co-invest opportunities. So there is a number of other vehicles other than the retail funds or the '40 Act funds that the Advisors -- primarily NexPoint Advisors provides investment advisory services.

Q. So prior to the execution of the Shared Services Agreements, were these Advisors receiving the services set forth in these Shared Services Agreements from Highland?

A. I don't believe so. And as I mentioned, I was actually involved in a large part at the Advisors providing services to the Advisors. We weren't outsourcing. I ran a trade settlement group as well as an operations group in accounting. We had a number of -- we actually had our own traders. We had our own valuation committee. All these things are listed in here.

And so there was some of these services, and it was phased in over time. And so there was a handoff and a coordination in order to reduce the duplication of costs. So...

Q. Okay. So they weren't receiving -- the Advisors weren't receiving these services

NORRIS

prior to the Shared Services Agreements from Highland?

A. I'm not sure specifically on any of them. Again, it's over a decade ago, and that's not something that I have an answer for.

Q. Okay. So let's move on. Are you aware that the Advisors filed an administrative claim against Highland in January of 2021?

A. I am.

MS. WINOGRAD: Okay. La Asia, can we pull up Exhibit 11. Scroll down a little bit, please.

(Exhibit 11 marked for identification.)

BY MS. WINOGRAD:

Q. Okay. Do you recognize this document?

A. I do. And I think I actually have it on my desk.

Q. So this is the administrative claim filed by the Advisors on January 25th of 2021, right?

A. Yes.

Q. So the facts set forth in this document state the basis for the Advisors' claim

1 NORRIS

2 against Highland, right?

3 A. As known at that time, yes.

4 Q. Is there anything inaccurate in this
5 document?

6 A. Based on what we knew at that time,
7 no. And there's been a number of other things we
8 have learned through discovery, and discovery is
9 ongoing, as I mentioned. We haven't had the
10 ability to talk to Mr. Waterhouse or Mr. Klos.
11 Mr. Seery will be deposed.

12 Q. Okay.

13 A. And so --

14 MS. WINOGRAD: Can we please scroll
15 to paragraph 16.

16 MR. RUKAVINA: I'll note for the
17 record that counsel keeps cutting off the witness
18 before he finishes his answer. So that was an
19 example.

20 THE WITNESS: True.

21 BY MS. WINOGRAD:

22 Q. Okay. Mr. Norris, looking at
23 paragraph 16, it says, "Beginning around
24 July 2020, Mr. Seery directed the Debtor to cease
25 providing to the Advisors as otherwise

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contemplated under the Shared Services

Agreement" -- SSA stands for Shared Services

Agreement, right?

A. Yes, it's defined as Shared Services Agreement in this document.

Q. Okay. And PRAs, and that's defined as Payroll Reimbursement Agreements, right?

A. Correct.

Q. Do the Advisors contend that this statement is accurate?

A. Yes.

Q. Okay. So in July of 2020, Mr. Seery was Highland's CEO, correct?

A. I'm not sure what his specific title was in July of 2020.

Q. Okay. Can you tell me all of the facts you're aware of that supports the statement in paragraph 16 that I just read?

A. Yeah. And, again, I would point out that discovery is ongoing. There is a number of facts that we hope to be able to obtain from Mr. Waterhouse and Mr. Klos who haven't been able to talk to us. Obviously Mr. Klos, because he's employed by the Debtor or employed by Highland,

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and Mr. Waterhouse because his attorneys haven't allowed us to talk to him. And so we think we'll get more information on this.

But -- and key here, beginning around July 2020, there was a number of services. Mr. Seery appeared in August with our retail board and told them specifically he was not allowing his employees, his legal team, his front office investment teams under the Shared Services and PRAs, the services they normally would provide, to provide certain services related to assets that were held across both entities. There were multiple instances where they were no longer going to be providing services.

Historically Highland had provided our legal services, compliance services. And so there was a number of things specifically where they were told do not work on. Those were things we normally would have help on. That includes -- we had a conflicts committee any time there were cross-held positions. There were instances where we had to convene our own investment research. They had analysts in the front office that covered these names; we were not. And so we were

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1
2 paying for front office services for investments
3 that our funds were invested in that we could no
4 longer receive those services for. And we had to
5 do a number of things in order to plug those
6 holes. But it was very clear, I even saw an
7 email from Mr. Seery to the legal team saying
8 they would be fired if they worked on a certain
9 matter. That was an entity -- an asset that was
10 cross-held that -- obviously there is the
11 contention on Highland's side if there was
12 conflicts, but those were things that were
13 provided under the Shared Services Agreements and
14 PRAs prior that were no longer provided starting
15 on or around that time.

16 Q. Okay. So that was a lot, so I'm just
17 going to try to clarify a few things.

18 Can you specify what services you
19 were referring to? You mentioned legal, but I
20 just want to make sure I understand the specific
21 services that you were stating there.

22 A. Yeah. Legal and compliance services.
23 There was litigation support as well. There was
24 some items that we were involved in litigation on
25 that Mr. Surgent, for example, was participating

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in. He had to drop that at Mr. Seery's request and turn it over to DC Sauter on our end.

There is front office investment services related to certain entities. There was valuation related to that, valuation services. There was committees and conflicts-related committees that were always handled and run by HCMLP and their legal compliance and investment professionals.

Let me go to the advisory agreement here, specifically. If you want to pull up -- we can go line by line if you -- actually, let me pull up -- I think, again, that's a start. And there are other items. And, again, discovery is ongoing, but our position is that there were significant items that would have normally been provided during that time period under those agreements.

Q. What -- what exactly did Mr. Seery say to Highland in July of 2020?

A. What did he say to Highland?

Q. Uh-huh.

A. As in directed to the Debtor?

Q. Yeah. So looking at paragraph 16, it

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says, "Beginning around July 2020, Mr. Seery directed the Debtor to cease providing services."

What did he say?

A. Yeah, we -- again, discovery is ongoing. We're going to have a chance to actually talk to Mr. Seery, too, get his testimony. But we know that he told the legal team and the compliance teams to specifically not work on certain things. He told the investment professionals as well. He told our traders -- again, our traders cannot do something for us. They were providing trading services, yet, the traders were employed by our Advisors. And so -- but there were specifically certain matters.

And he told Mr. Sauter that he had instructed his team not to work on things that were in opposition to the Debtor, which could be understandable, but those services also impacted our investments that they normally would work on under the Shared Services Agreements. And we had to find ways to handle that. So...

Q. Okay. Did Mr. Seery say all of these things in person?

A. The call that he had with our board

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was he called -- he dialed in. And I don't -- to the extent of certain individuals, some of it was in writing; some of it was in person. We haven't actually seen one of the emails I referred to yet from your discovery. That one hasn't been provided maybe because it was to the legal team, and there is a claim of privilege. But he said to Mr. Sauter in email specifically that his legal team was not allowed to work on certain matters. But there was other items that were directed in person or by phone.

Q. Okay. And as a result of Mr. Seery's statements, did the Debtor stop providing services to the Advisors?

A. Yes.

And I would also point out that there was a number of things that typically -- and I mentioned -- another one I thought of is there were officers of our retail funds that were employed by HCMLP. That was one of the services. And we had a number of board meetings and matters, they just didn't join because there was a potential conflict. And that included Lauren Thedford, Dave Klos, Frank Waterhouse. And we

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would typically have had much more support under the Shared Services Agreement. And that was a direct result of the concerns they had with even potentially having an issue with Mr. Seery, Mr. Klos, and Mr. Waterhouse have told me that they were concerned that Mr. Seery had said multiple times that they would have potential personal liability and be fired if they did anything that could be detrimental to the estate or could harm the monetary interest of Highland.

So they were -- they were concerned. And so they understandably were very cautious in what they were doing and providing, and that second -- you know, during that entire period after that on or around July 20th, there was significant less -- significantly less support from the Highland group.

Q. When did the Advisors first learn that Highland stopped providing those services?

A. There was -- you know, obviously -- in regard to just this or in regard to just services in general?

Q. The services that are referenced in the second sentence of paragraph 16 that you just

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talked about.

A. Yeah. In regard to the Court's concerns about providing certain services to non-Advisors resulting in on or around. I think that's pretty clear, you know, as a result beginning on or around July 20th.

Q. Okay. So the Advisors learned this on or around July 2020?

A. Uh-huh.

Q. Okay. So when they found out that Highland stopped performing these services, what did the Advisors do?

A. Yeah, so we had a number of discussions, including emails with Mr. Seery, including discussions with Mr. Waterhouse, Mr. Klos. We had -- our attorneys had discussions and conversations with Highland's attorney. There was an email back and forth between your firm, Pachulski, and our attorney, K&L Gates, in October. Our board expressed concerns when Mr. Seery was on the call in August directly to him. There was a number of conversations. Mr. Sauter had ongoing conversations --

1 NORRIS

2 THE WITNESS: Excuse me, was that --

3 MR. RUKAVINA: My fault.

4 A. There was a number of discussions
5 regarding services being provided. And granted
6 at this point -- up until this point, largely
7 both sides believed there would be an amicable
8 resolution to the whole bankruptcy, including
9 Mr. Seery who multiple times even told our board
10 that he viewed that there would be an amicable
11 resolution. And so we had a lot of ongoing
12 discussion throughout all this, and the response
13 was, sorry, this is, you know, from
14 Mr. Waterhouse and Mr. Klos, this is what we've
15 been directed to do; there is an automatic stay.
16 I've been told we can't do this. We have to be
17 careful. We're worried about what Mr. Seery will
18 do. And the direction from Mr. Seery to
19 Mr. Sauter was what you find in the email and
20 discussions.

21 BY MS. WINOGRAD:

22 Q. Okay. Just moving forward, I'm going
23 to ask you to just try to listen really carefully
24 to what I'm asking and keep your answer
25 responsive to my question.

1 NORRIS

2 MR. RUKAVINA: And I would ask you
3 when you find a convenient time for a restroom
4 break, no rush.

5 THE WITNESS: I could use one, too.

6 MS. WINOGRAD: Sure. Let me just
7 finish this line of questioning, and then we'll
8 take a small break. I should be done in a couple
9 of minutes.

10 BY MS. WINOGRAD:

11 Q. Did the Advisors tell Highland in or
12 around July of -- July or August of 2020 that
13 Highland was in breach of the Shared Services
14 Agreements as a result of Mr. Seery's direction?

15 A. Did we tell Highland that they were
16 in breach? I'll just reiterate my -- there was a
17 lot of discussions ongoing about the concerns of
18 the services and -- including both the Shared
19 Services and Payroll Reimbursement Agreement.

20 Q. Okay. But there was no discussion
21 regarding a breach on Highland's part?

22 A. Oh, I think there -- I don't know if
23 that's a defined term, "breach," but we certainly
24 clarified that we were paying for services we
25 were not receiving under both agreements, and

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that was clear throughout.

Q. Okay. So as a result of Mr. Seery's direction, did the Advisors in or around July of 2020 and August of 2020 make a demand on Highland that it perform under the Shared Services Agreements?

A. That specifically, we demand you perform, no. But we sent a letter, an email that we thought that they were overbilling. And we actually asked for the invoices --

Q. When --

A. -- and none were provided to us.

What's that?

Q. No, I didn't -- I thought you were done. Continue.

A. Yeah, I cut off my train of thought there. But there was multiple requests specifically to what they were charging us. Because if you go back to the Shared Services Agreement for HCMFA, it was a cost plus 5 percent. If you go to the Payroll Reimbursement Agreement, it was a reimbursement for actual employee expenses. So on or around this time, we started asking for invoices, and we did that over

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many months asking many different people, and they wouldn't provide it to us because they had said they couldn't. Mr. Seery wouldn't allow it. We would ask; they couldn't. And that was DSI, that was Frank and Dave, that was directly to Pachulski in multiple -- there was an email and then there was a letter on December 11th.

So there was ongoing discussion throughout this time period that we were trying to get to the answer. We didn't know. We had outsourced this to Highland to take care of, and we assumed they were billing us for the proper amount. That's important. We relied on Highland for what they were billing us. And so we assumed they are doing less services. Okay. If they are doing less services, they would bill us for actual services. We later found out that wasn't the case.

Q. Okay. So other than asking Highland for invoices, did the Advisors say to Highland in or around July and August of 2020 that Highland was not performing under the Shared Services Agreement?

A. Your language there "not performing."

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There were still certain services they were doing. It wasn't they ceased all services. Right? And what we did, instead of making a major issue about it, because we knew there was an automatic stay, we knew we couldn't terminate the agreement, what we did is we went and hired additional employees. We brought Jason Post in-house. He was a Highland employee. That was approved by Mr. Seery and Mr. Surgent.

We also hired another attorney because we couldn't provide -- Highland wasn't providing those services. In addition, we had to rely on firms like K&L Gates who was Advisor counsel to provide an up- -- a big increase in additional services during that time period that we would have received from Highland.

Mr. Sauter -- you want to interrupt?

Mr. Sauter, who was hired as a -- an attorney to work on real estate-related acquisitions and transactions had to step in and do a lot of things that Highland's legal and compliance team would have done, and litigation support would have done.

So there was the understanding that

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we were paying for services that were provided, not paying for what wasn't provided, which is what we ended up learning that, one, we paid for services that weren't provided, which was a reimbursement on both the PRAs and SSAs.

Q. Are you done?

A. I am, yeah.

MS. WINOGRAD: I'm going to move to strike all of that because none of it was responsive to my question.

BY MS. WINOGRAD:

Q. Did Highland in or around July or August of 2020 tell the Advi- -- did the Advisors tell Highland in or around July or August of 2020 that Highland was not performing under the Shared Services Agreement, yes or no?

A. I -- I know you moved to strike, but I believe that was responsive in that we provided -- my screen went blank. Sorry. It's back.

All of that was explaining what we actually notified Highland of and the discussions we had had regarding the quality of service.

Q. Okay. So is there a document that

NORRIS

reflects the Advisors telling Highland during this time that Highland was not performing its obligations under the Shared Services Agreements?

A. Again, let's go back to "not performing their obligation." There is a number of services they were providing. We acknowledge that. It's just were we paying for what was provided, right? Did they -- did they drop all services? No. They provided a number of services. And there was a lot of people working really hard during this time period, a lot of great -- great people that did great work. But they were charging us for the full amount of services that they were providing pre-bankruptcy, continued to charge us for the same amounts without adjustments.

And on the PRAs, we didn't know that they continued to charge us for employees that were no longer hired or employed by Highland. In fact, many of them weren't even employed at the filing of the bankruptcy. And so at this point we were relying on Highland to be paying the proper amounts and to be billing us the proper amounts, and they continued to charge for

1 NORRIS

2 employees that weren't there.

3 MR. MORRIS: Can I have the question
4 read back, please?

5 MR. RUKAVINA: I just want to note
6 again that my witness was interrupted in
7 mid-sentence.

8 MR. MORRIS: The question was whether
9 there's anything in writing. So let's have the
10 question read back, please. These speeches are
11 getting a little longwinded.

12 MR. RUKAVINA: Yeah, yeah. I'll
13 answer that. Is Mr. Morris asking the question
14 now, or is that coming from Hayley.

15 MR. MORRIS: I want to know what the
16 question was asked, and then I will let
17 Ms. Winograd take over.

18 THE REPORTER: QUESTION: "So is there a
19 document that reflects the Advisors
20 telling Highland during this time that
21 Highland was not performing its
22 obligations under the Shared Services
23 Agreements?"

24 A. There are emails saying that the
25 services -- we believed that we were paying for

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services not provided. There is an email from our counsel, K&L Gates, to Pachulski in October. There is an email in December, December 11th that was sent requesting documents. There is emails from myself and DC Sauter to Frank and Dave trying to understand what we were paying for. And a response saying that there was a profit being charged and that they were charging for employees that were no longer employed. So that is -- those are the -- those are the written items. There may be others. Again, we haven't had a chance to conclude our discovery. We haven't even spoken to Mr. Waterhouse on this. He may know of other items. We haven't spoken to Mr. Klos. We haven't deposed Mr. Klos. But I think there is a lot of written materials there.

BY MS. WINOGRAD:

Q. Okay. Mr. Norris, I don't care what all of these other people know about this. I'm asking you as a 30(b)(6) witness just for the record. And so you mentioned that the Advisors found out that -- that the Debtor stopped providing these services as of July of 2020, but then the first time that this was reflected in an

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email was October of 2020, as you just said.

A. Yeah, I think the -- well, there may be others, and there was conversations with our board. I'm sure there's board minutes. There was conversation with Seery in August where they expressed concerns.

But the key aspect here, even during this timeframe when we found out, we assumed we would be paying for actual services provided plus 5 percent. If they stopped providing the services for legal and compliance, if they stopped providing certain services, we would assume they wouldn't be billing us for that. And so was there a need? Well, sure, certain services dropped off. We understood that the Court had concerns. We understood that there was conflicts that people couldn't be working. We were understanding. Like, this was a unique situation. But we didn't assume we would continue to pay the same amount.

You know, if someone's at one point paying -- providing investment advisory services, again, the Investment Advisory Agreement -- or PRAs are a cost plus.

1 NORRIS

2 MR. RUKAVINA: Is this a good point
3 for a restroom break?

4 MS. WINOGRAD: I have one more
5 question before we take a restroom break.

6 BY MS. WINOGRAD:

7 Q. If the Advisors knew as early as July
8 of 2020 that Highland wasn't performing its
9 obligations, why did it continue to pay for these
10 services for up until at least October of 2020?

11 A. Yeah, and I'll -- I'll lay this out
12 again. We didn't pay. We had actually provided
13 and relied on Highland, HCMLP, and their
14 accounting services, their legal services to
15 continue to pay. Highland employees prepared an
16 invoice, they made a payment, they actually had
17 access to our bank account, they continued to
18 make those payments all along the way. We did
19 not know that we were paying for services that
20 were not provided. We didn't know at that time
21 that we were paying for employees that were no
22 longer employed. Had we known about it and we
23 started to get an understanding or started to
24 think that and we asked multiple times, and until
25 we actually got the data or started to get the

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data -- and, in fact, when we found out we were paying for employees that were no longer employed, we were shocked, looking at the actual schedule of who they were charging for.

So what were we paying Highland for if not for accounting back office payments, accounts payable services, and Highland knew of the overpayments and continued to process them in the ordinary course. And Dave and Frank told us when we asked about it and finally found this out. They said they discussed it. They even created a calculation of overpayment. They discussed it with Highland counsel. They discussed it with management, and there was nothing they -- they were told there was nothing they could do because of the automatic stay.

And it's at that point that was the first time -- I'm not an attorney, and I'm not a bankruptcy attorney at all -- heard the word "automatic stay." So there is -- that's a longwinded way of answering the question.

Q. So NexPoint was paying almost \$200,000 a month, correct?

A. The exact number -- NexPoint was

NORRIS

paying \$252 for -- \$252,000 for payroll reimbursement amount.

Q. No, I'm talking about the -- under shared services.

A. Did you say HCMFA or NexPoint?

Q. NexPoint.

A. NexPoint I believe the number was 168,000.

Q. 168,000. But it didn't know what it was paying for, right?

A. Can you clarify your question?

Q. You said that -- earlier you said Highland was paying, you said when I asked why the Advisors continued to pay. So NexPoint -- isn't it fair to say, then, that NexPoint was paying all this money but that they didn't understand what it was paying for during this time?

A. We thought we knew what we were paying for, right? And I'll clarify here. There is a NexPoint agreement that has a stated \$168,000 as you mention, and there's a HCMFA agreement that's cost plus. We thought we were getting the services we bargained for, and we

1 NORRIS

2 would assume that Highland would actually bill us
3 for the actual services provided, which we were
4 paying around \$300,000 a month for HCMFA Shared
5 Services Agreement. And it was \$252,000 a month
6 for NexPoint Advisors PRAs, and the HCMFA PRAs
7 were \$416,000 a month. We can go through the
8 calculations on what we believe was the
9 overpayment during this entire period, but it's,
10 you know, significant, right? We provided our
11 calculation, which is utilizing Ms. Hendrix
12 numbers for payroll that I believe was taken
13 directly from the payroll system, and that shows
14 \$7.6 million for paying for employees that were
15 no longer employed.

16 MS. WINOGRAD: Okay. I'm going to
17 move to strike all of that. It was unresponsive
18 to my question. And we're going to now take a
19 five-minute break. So why don't we come back at
20 11:45.

21 MR. RUKAVINA: Can we take ten,
22 Hayley? I've got to make a quick call.

23 MS. WINOGRAD: Sure. Let's come back
24 at 11:50.

25 MR. RUKAVINA: Thank you.

1 NORRIS

2 (A break was taken from 10:39 a.m. to
3 10:52 a.m.)

4 MS. WINOGRAD: I apologize for
5 interrupting you before. I didn't intend to, and
6 I will try to make sure that you finish your
7 complete answer. At times there was a little
8 pause and I maybe thought you were done and I got
9 ahead of myself. But in turn, I would also ask
10 that you please listen carefully to my questions
11 and just answer the questions that I asked. Is
12 that fair?

13 THE WITNESS: Yeah, I -- no, I
14 appreciate that. And I may well have been
15 attempting to answer the question the best I can.

16 MS. WINOGRAD: Thank you. All right.
17 We'll get through this.

18 BY MS. WINOGRAD:

19 Q. So I just want to go back a little
20 bit about these -- you mentioned that the --
21 there were certain conflict issues relating to
22 Mr. Seery's directions to the Debtor, right?

23 A. Uh-huh.

24 Q. One of those issues involved OmniMax,
25 right?

NORRIS

A. It did.

Q. Were there any other conflicts that existed other than OmniMax?

A. There were a number of -- other issues, investment -- in addition to OmniMax.

Q. Okay. Were there any issues unrelated to issues of conflicts?

A. So I think when you look at -- you have conflicts, but then it started out with the OmniMax transaction where no one can work on this, and then it turned into, well, anything that could be perceived as being amicable to the Debtor, and then it turned into most of the services, legal and compliance, just eventually stopped. And so it wasn't a, you know, let's-halt-everything-can't-do-anything. So outside of conflict, there was a drop-off in the overall services, I think also in line with what was going on at this time.

Q. Okay. So just to confirm, the -- so in paragraph 16 that we talked about for a while, when Mr. Seery directed the Debtor as it's alleged in the claim, there was -- those directions related to issues of conflict, right?

NORRIS

A. Largely, yes. And I would say particularly at the start, yes.

Q. Okay. Did the Advisors inform the retail boards that there were these issues going on at the time?

A. Yes.

Q. Okay. When, exactly, did they inform them?

A. As they were happening. I kind of laid out that timeframe, but as they were happening. We had -- I don't remember the specific number, but it was around 24 retail board meetings in 2020, and particularly around this time period, beginning in July and on many more. And in the first two months of 2021, we had a significant number of board meetings. So the board was very aware of all those challenges. And Mr. Seery had joined the board meeting and expressed some of those items directly to the board.

Q. Okay. Do the Advisors contend that the -- that Highland is required to perform certain services that would have been adverse to the Debtor?

NORRIS

A. I don't think that's our contention, right? There would be certainly areas where there would be conflicts sort of -- yeah, that's not our contention.

Q. Okay. Are you aware that in August of 2020 the court -- the bankruptcy court issued an order expressing concern regarding certain Highland lawyers' conflicts of interest?

A. Yeah, I think that's probably what we referred to in our filing.

Q. Uh-huh.

A. If you can open it back up, I think it says -- I don't have it in front of -- that one right in front of me, but it said including the Court's statements.

Q. Okay. So you are aware, right?

A. Yes.

Q. Okay.

MS. WINOGRAD: So, La Asia, can we please pull up Exhibit 30.

(Exhibit 30 marked for identification.)

BY MS. WINOGRAD:

Q. This is it the order we just referred to, right?

NORRIS

A. I don't know. I've never seen the order.

Q. Okay. That's fine. This was the issued by the bankruptcy court on August 11th, 2020, right?

A. Again, I don't know. I'm not an attorney. I'm still learning what court documents mean. But it says "order" down below, and it's signed August 11th.

Q. Okay. That's fine.

MS. WINOGRAD: La Asia, can we scroll to page 10, please. There we go.

BY MS. WINOGRAD:

Q. Do you see here in bold it says, "The court trusts the Debtor's independent directors and new CEO are scrutinizing the issue of in-house lawyers potentially advising both the Debtor and Highland Non-Debtor Entity targets"?

A. Yes.

Q. Okay. And it's fair to say when the Court refers to the new CEO, it's referring to Mr. Seery, right?

A. I'm not -- I'm not familiar with the structure. So I don't know that that's a safe

NORRIS

assumption. But if you tell me that's the case, I'll take your word.

Q. Okay. Do the Advisors contend that Highland breached its duties around July of 2020, August 2020, by avoiding conflicts pursuant to this language?

A. And I don't believe that's our stance, right? The approach here is we were paying for actual services provided, and if they couldn't provide them because of conflicts, they should have charged us for them or reduced our billing. Those services were normally provided. Even if there is a conflict, you can't just bill for the cost of something that was not provided.

So we don't contend that they should have been providing services that were, you know, in conflict to your own state.

Q. Okay. Was there anyone at the Advisors charged with the responsibility of making sure that the Advisors paid for services that they were, in fact, receiving?

A. We had outsourced that to Highland. And -- and up until this point, we had believed that Highland was doing the right thing. And the

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agreements are very clear on what the responsibilities in fair dealing are, and we had tasked Highland with that.

At this time because of the conflicts, other people started to get more involved because Highland couldn't perform those functions. And that's when all of the -- all of the things we've been talking about came about.

So we did not have an accounting team or someone in-house that was tasked with verifying the payments. And because we had a trusted -- we thought trusted group -- and even then we think that the accounting team had done the right thing in tracking it, but did not bring it to our attention, the overpayment, because they were told by Mr. Seery and their counsel and DSI that they couldn't do anything about it because of the automatic stay.

Q. Okay. But didn't the accounting team report to Mr. Waterhouse?

A. They did, who was the CFO of Highland Capital Management, LP.

Q. And he was also the treasurer of NexPoint, right?

NORRIS

A. He was the treasurer of our Advisors, correct. But he performed those functions and his accounting function that was outsourced Highland.

Q. Okay. So did -- was Mr. Waterhouse aware in July of 2020 of these issues of conflict that we just talked about?

A. I mean, we haven't had a chance to talk to Mr. Waterhouse in preparation for this, and we'll definitely ask him that in the deposition. But we don't -- I don't know what Mr. Waterhouse knew and when.

MS. WINOGRAD: Okay. La Asia, can we show Exhibit 11, please. Yeah, can we scroll to paragraph 17, please.

BY MS. WINOGRAD:

Q. Do you see here in the second sentence of paragraph 17 that it says, "For example, upon information and belief, the Debtor has booked a net income from the Shared Services Agreement of approximately \$10 million since the petition date?"

A. I do.

Q. Okay. Do the Advisors contend that

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this statement is accurate?

A. Yeah, so based on at that time of what we knew and understanding, we were taking this from information that was relayed from Mr. Klos and Mr. Waterhouse without seeing documents. Now that we have received the discovery items, we believe this number is for the Shared Services Agreements and PRAs, right, that there had been profits. We received the calculation from Mr. Klos that shows \$9.6 million of annual profits that were reported.

Q. Okay. So I just want to make sure I have this correct. You said that the \$10 million is actually profits from both the Shared Services Agreement and the Payroll Reimbursement Agreement?

A. Yeah. And that was based on the information we had at the time. And that should be Shared Services Agreements and PRAs.

Q. Okay. And the \$10 million is reflected in a document; is that right?

A. Of approximately, yeah. So in discovery there was a document provided. The label is ACL025012. This is Intercompany

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Services Agreement. And it has a, quote,
"estimated gain on all intercompany agreements of
\$9.6 million."

Q. Okay.

A. And that is -- in the email that was
an annual amount, and we're talking 16 months in
the bankruptcy filing until the end of the SSAs
and PRAs, so arguably that is higher.

Q. Okay. And then it says in the first
sentence of paragraph 17, "The Advisors continued
to pay for those services under the Shared
Services Agreements and PRAs consistent with
historical practice despite the fact that the
Debtor is not providing all of the required
services.

So what do the Advisors mean by
historical practice?

A. Yeah, the historical practice was we
outsourced payments, calculation of those
payments to Highland, and the actual -- they had
access to our bank accounts to make the actual
wires and approve those. So that continued.

The accounting team over there,
Kristin, Dave, Hayley, Frank, they continued to

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2 make those payments. And we assumed that they
3 were continuing to make the payments based on the
4 actual services provided.

5 Q. Okay. So before making the payments
6 each month, did the Advisors take any steps to
7 ensure that it was paying for service it
8 received?

9 MR. RUKAVINA: Objection. Form.

10 A. Again, we relied on the provided
11 services -- and if you look at the Shared
12 Services Agreement, it's accounts payable, it's
13 accounting services, and that was what we relied
14 on.

15 BY MS. WINOGRAD:

16 Q. Okay.

17 A. We didn't -- sorry. Go ahead.

18 Q. No, continue. I thought you were
19 done.

20 A. I'm good.

21 Q. Okay. So in that same paragraph in
22 the last sentence, it states that, "The Advisors
23 have incurred significant additional expenses
24 obtaining services elsewhere that the Debtor was
25 required to provide under the Shared Services

1 NORRIS

2 Agreements." Do you see that?

3 A. I do.

4 Q. Okay. What services are the Advisors
5 referring to here?

6 A. Yeah, so specifically this is legal
7 and compliance services. And so there were
8 significant additional costs. I mentioned we had
9 to hire another attorney who is not -- doesn't do
10 any litigation-related work or related bankruptcy
11 work. It's general legal services.

12 And then Jason Post, who was hired
13 directly to the Advisor, while we continued to
14 still pay the same dollar amounts even after he
15 moved over. So those -- those were the
16 additional expenses.

17 In addition, there were outside legal
18 expenses. We had to lean heavily on K&L Gates
19 and Davor and his team. But, you know, we had
20 considered including those expenses here, the
21 outside legal expenses, but in order to not waive
22 privilege, we're not going to try and quantify
23 those. We quantified what we believe is the cost
24 for the additional attorney and Mr. Post for the
25 five months Post -- that they moved over or were

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hired. But those are the significant additional expenses for the Shared Services Agreements.

Q. Okay. And are there documents to reflect these additional expenses you just talked about?

A. Yeah, we have hiring documents. There is emails coming from Mr. Surgent to Mr. Sauter saying that these -- that Jason Post needs to move over, that it's been approved, the reason and rationale. And then we have -- it's just a simple math, what was their pay. And I confirmed with our payroll team, accounting team on what the compensation for the additional attorney from the time he was hired in October until the end. And then Mr. Post's compensation during that time as well.

Q. Okay. Those documents that you just mentioned, do you know if those have been produced to Highland?

A. The emails between Mr. Surgent and Mr. Sauter are in your possession. The additional payroll items I'm not sure. I can check with Mr. Rukavina.

Q. Uh-huh.

NORRIS

A. And I can talk about the amounts, if you want, what we assume the amounts to be.

Q. Okay. Can we go to paragraph 19, please.

Okay. It says here, "The Advisors have brought these issues to Mr. Seery's attention."

We kind of touched on this earlier, but I want to get a little bit more specific. What issue is this sentence referring to?

A. I would -- it's probably in the paragraphs above. Maybe we scroll back up and see what "these issues."

Q. Are these issues relating to the conflicts issues?

A. I don't see -- the paragraph immediately above said, "There have also been similar overpayments under the PRAs. There is a schedule attached to PRAs of investment professionals whose compensation would be reimbursed by the Advisors, but this schedule is incredibly outdated and includes many individuals, for example, who departed the Debtor before the petition date or during the bankruptcy

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case. As a result, the Advisors estimate that since the petition they've overpaid under the PRAs more than \$9 million."

That is certainly an issue that would be these issues. If you scroll up to 17, maybe you can scroll up, we can take a look at that.

Q. Okay. And so do you know when the Advisors brought these issues to Mr. Seery's attention? Was it -- yeah, do you know when?

A. There was multiple times throughout that time period, that late 2020 period.

Q. Okay.

MS. WINOGRAD: La Asia, can we please pull up Exhibit 5. Thank you.

(Exhibit 5 marked for identification.)

BY MS. WINOGRAD:

Q. Are you familiar with this document?

A. Very high level.

Q. Okay. Can you confirm this is a Sub-Advisory Agreement between Highland and NexPoint?

A. This Sub-Advisory Agreement dated effective January 1st, entered into between NexPoint and -- yeah, that looks to be the case.

NORRIS

Q. Okay.

MS. WINOGRAD: La Asia, can we please scroll to page 13. Thank you.

BY MS. WINOGRAD:

Q. So this was signed by Frank Waterhouse on behalf of both Highland and NexPoint, right?

A. Again, that appears to be the case. Without checking with Mr. Waterhouse, I don't know that he personally signed, but it does appear to be his signatures.

Q. Okay. And as you just said, this -- this agreement was effective January 1st of 2018, right?

A. We'd have to go back up and look. I think that was the date.

Q. We'll just go back to the first page just to confirm.

A. Yeah, effective as of January 1st, 2018, that's correct.

Q. Okay. Do you know the purpose of this agreement?

A. So on this, I do not. Again, this is one that we have not had access to

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Mr. Waterhouse, who signed this, in understanding the purpose of this.

If you go down reading the agreement, if you want to scroll down, I believe this was to provide compensation for certain front office services.

Q. Uh-huh. And are front office services, are they investment advisory-type services?

A. Again, let's look -- and I'm not as familiar with this document. I know I had seen it at some point, but maybe you can scroll down.

Q. Yeah, let's go to Section 1. There we go. It says here, "Limited Scope of Services." Do you see here in subsection (a) it says, "Highland is hereby appointed a Sub-Advisor to the Management Company for the purpose of assisting the Management Company in managing the Portfolios of each Account pursuant to the Management Agreement and Related Agreements"?

A. Yes.

Q. Okay. So is it fair to say based on that language that this agreement related to investment services?

NORRIS

A. It appears that way, but I'm not great at interpreting legal documents, because I'm not an attorney.

Q. Okay. So do you know if this was subject to negotiation?

A. I -- I do not know on this one. And this is one that I asked -- in preparation for this, I spoke with different people, and I don't know the process that went into the creation of this document.

MS. WINOGRAD: Okay. Can we go to -- go to page 3, please.

BY MS. WINOGRAD:

Q. Do you see here where it says "Compensation" under subsection 2?

A. Uh-huh.

Q. And it says here, "As compensation for its performance of its obligations as Sub-Advisor" -- and Sub-Advisor, can we agree, refers to Highland?

A. Yes.

Q. Okay. And then it says, "...the Sub-Advisor will be entitled to receive a monthly fee in the amount of \$252,000," right?

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A. Yes.

Q. Do you have any idea how this number was arrived at?

A. I do not.

Q. Okay.

A. Again, we haven't had access to Mr. Waterhouse and Mr. Klos, who I believe prepared that. And the number is, I would say, the exact number that is from the Payroll Reimbursement Agreement, which was instituted and may have, I think, took over this agreement effective the same date, and was applied to a certain number of employees and their specific allocations of time and compensation. So I don't know for certain that that's -- it just happens to be the same amount, but then the other agreement came in as effective the same date. We haven't been able to speak to Mr. Waterhouse to get the full details, but I -- I think it's based on the reading here and the number, it is based on if it were the same exact number of the same agreement, which was, I think, superseded this, effectively the compensation for those front office employees at that time.

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Q. Okay. So it's fair to say, then, based on this agreement, what we're looking at, that this is the number that the Advisors paid to Highland for certain sub-advisory services rendered by Highland, right?

A. Only to the extent this agreement was in force.

Q. Okay. Perfect.

Do you know when this agreement was terminated?

A. I don't. And you have the -- actually, I have the PRA for NexPoint Advisors.

Q. Okay. We'll -- we'll get to that, but we -- we can get there in a second. So --

A. I think it was -- sorry, go ahead.

Q. So just to stick with this specific agreement for a second before we move on to the PRAs.

So people employed by Highland had been providing advisory services to the Advisors since the Advisors were formed, right?

A. Sorry, go ahead. Can you repeat that?

Q. Highland employees had been providing

1 NORRIS

2 Advisory services to the Advisors since the
3 Advisors were formed, right?

4 A. Not necessarily. There was -- like I
5 mentioned earlier when the Advisors were first
6 formed, there were a number of employees employed
7 directly by the Advisors and providing those
8 services. And, in fact, some of the services
9 that HCMFA continues to provide has front office
10 services from certain employees. So there may
11 have been some services provided prior to that,
12 but I don't know the extent.

13 Q. Okay. That's fine.

14 MS. WINOGRAD: La Asia, can you pull
15 up Exhibit 6.

16 (Exhibit 6 marked for identification.)

17 MS. WINOGRAD: Okay. Thanks.

18 BY MS. WINOGRAD:

19 Q. Are you familiar with this document?

20 A. I am.

21 Q. Okay. This is a Payroll
22 Reimbursement Agreement between Highland and
23 NexPoint, right?

24 A. It is.

25 Q. And it's entered into May 1st of

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2018, right?

A. Yes. Effective January 1st, 2018.

Q. Great. That was my next question.

Okay. And this was four months after the Sub-Advisory Agreement became effective, right?

A. That is correct.

MS. WINOGRAD: Okay. Can we go to page pdf 526, please.

BY MS. WINOGRAD:

Q. Does that look like Frank Waterhouse's signature to you?

A. I would assume so, but I would be speculating. There is no name or title there, but --

Q. That's fine.

A. -- it looks similar to the other ones we saw.

Q. Do you know who drafted this Payroll Reimbursement Agreement?

A. I do not.

Q. Okay. So the Payroll Reimbursement Agreement provided that the Advisors would pay Highland for Highland providing certain sub-advisory -- certain advisory investment

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services, right?

A. It would not pay. It would be a reimbursement. And this, again, gets back to a point I made earlier that this was an important point, we couldn't be a profit center. This is a reimbursement for actual expenditures for -- if you go to the top, I think you can see the provision. It's dual employees -- maybe you can scroll up to --

Q. Let's go to page 1, Section A, because that spells it out.

A. Yeah: Dual employees who are providing investment and -- who are dual employees and providing investment advisory services.

And, again, it's a reimbursement for the actual cost, which historically -- and if you see in the appendix it's what percentage of their time was allocated to services provided, whether a dual employee and providing investment advisory services.

Q. Okay. Fair enough.

So if we look at recital Section A, it says "HCMLP" -- which you agree refers to

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Highland, right?

A. Yes.

Q. -- "will seek reimbursement from NexPoint for the cost of certain employees who were dual employees of HCMLP and NexPoint and who provide advice to registered investment companies advised by NexPoint under the direction and supervision of NexPoint as more fully described in this Agreement below."

So it's fair to say that these were similar types of services that Highland was providing under the terms of the Sub-Advisory Agreement, right?

A. Again, I'm not certain. I believe this was to supersede that. And the understanding was the way that was drafted was not appropriate, given the nature of the '40 Act funds they were serving. But, again, we need to talk to Mr. Waterhouse for the intent or the reason for the two different agreements. But our understanding was this agreement, the other one was drafted, and this is to replace that. And that's why it's effective the same date and has the same amounts. But it is not sub-advisory

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services but reimbursement for actual costs.

Q. Okay. So dual employees, as that is set forth in the agreement of Highland, were providing these investment services, right?

A. Yes. Dual, and there may have been some dual employees that weren't providing -- weren't providing investment services. So this was they had to be a dual employee and providing services.

Q. Right. Dual employees that were providing -- the employees that worked at Highland that were providing these services under this agreement, they were called dual employees?

A. Well, they are in this agreement because they are dual employees, right. If they are in that appendix, they were dual employees, not the other way around.

MS. WINOGRAD: Okay. Can we go to page 7, please.

BY MS. WINOGRAD:

Q. Okay. This is an Exhibit A to the Payroll Reimbursement Agreement, right?

A. It is.

Q. Okay. And this is the list of the

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dual employees we just talked about, right?

A. No. This is a starting point of the dual employees as of January 1st, 2018. And these were the percentages at that time of the dual employees.

A dual employee, as you note, is an employee that is employed, and in order to be an employee, has to be employed and providing services. So we're talking postpetition claim here. Almost -- more than half of these employees weren't even employed as of the petition date of the bankruptcy filing date.

Q. Okay.

A. But -- go ahead.

Q. But this -- these are the employees that as of the time this agreement was entered into who were -- who were supposed to provide these services, right?

A. Yes, that's correct.

Q. Okay.

A. And I would note subject -- at that time, it's a point in time. So -- well, go ahead. Go ahead.

MS. WINOGRAD: Can we -- can we go

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back to -- okay. Let's go to -- let's stay on this page, actually.

BY MS. WINOGRAD:

Q. Do you see Matthew Gray here?

A. I do.

Q. Okay. And Matthew -- so what do these percentage allocations mean in simple terms?

A. Yeah, so I -- and agree it may specify it, but it's the percentage of their time that was spent providing investment advisory services to this particular Advisor.

Q. Okay.

A. Matthew Gray, for example, was employed by HCMLP. He worked for the organization. He did a lot of work on different entities including HCMLP, but 9 percent of his time for his allocation of costs were allocated to NexPoint Advisors as of this point in time.

MS. WINOGRAD: Okay. Could we scroll to Section 3.01 -- I'm sorry, actually -- yeah.

BY MS. WINOGRAD:

Q. So it says here, "Actual Cost Allocation. The Actual Cost of any Dual Employee

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relating to the investment advisory services provided to a Fund shall be allocated based on the Allocation Percentage. For purposes of this Agreement, 'Allocation Percentage' means the Parties' good faith determination of the percentage of each Dual Employee's aggregate hours worked during a quarter that were spent on NexPoint matters." Do you see that?

A. I do.

Q. So was there a way for the Advisors to track the aggregate amount of hours that an employee worked during a quarter?

A. We would -- and, again, this says the parties' determination. So Highland as well was responsible, and they were tasked with seeking reimbursement, right? So they had a process. I don't know exactly the process.

And, again, we haven't deposed Mr. Waterhouse and Mr. Klos, who would have been performing this. So this is the service -- accounting services we outsourced or leaned on Highland to provide, but also they would know the percentage of time that their employees spend.

And clearly in the appendix they have

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an allocated percentage. And -- so there -- I assume there is a mechanism and there was a mechanism, and I would even go to Mr. Klos' calculation that he did for the overpayment that we received in discovery.

He actually has an amount of actual investment support provided as of that point in time in late 2019 -- or late 2020, for the year period, with that. So it appears they have a methodology, but we'll learn more of that from Mr. Klos and Mr. Waterhouse.

Q. Okay. And just to kind of remind you to answer the questions I've asked. I asked if the Advisors had a way to know, but it sounds like your answer is no, right?

A. Specifically, again, these were employees of HCMLP. We didn't have access to their specific timesheets or their process. So we didn't -- no, we, again, we relied on Highland for that.

Q. Okay. So did Highland decide on these allocation percentages?

A. Again, as -- on this one in particular, the actual details around how these

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numbers were calculated, we don't know. Based on the information that I was able to glean as a 30(b)(6) witness from many discussions, we don't know. We are going to be relying -- not relying. We're looking forward to learning that from Mr. Klos and Mr. Waterhouse, but the actual specifics, we don't know.

Q. Okay. And if we go back to actual costs, if we just scroll down a little bit.

MS. WINOGRAD: La Asia, if we could scroll down a tiny bit. Thank you. Up a little bit. It's in the definitions section.

BY MS. WINOGRAD:

Q. So there it is, yeah. So it says here the actual costs -- it says, '"Actual Cost' means, with respect to any period hereunder, the actual costs and expenses caused by, incurred or otherwise arising from or relating to each Dual Employee, in each case during such period. Absent any changes to employee reimbursement, as set forth in Section 2.02, such costs and expenses are equal to \$252,000 per month." Right?

A. That's what it says.

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Q. Okay. And so as we just talked about, this is the same number that was reflected in the Sub-Advisory Agreement, right?

A. It is.

Q. Okay. So -- so it says here, "Absent any changes to employee reimbursement as set forth in Section 2.02, such cost and expenses are equal to \$252,000 a month." That statement makes sense to you, right?

A. Does it make sense?

Q. If you -- okay. Let me rephrase it. Do you see that, what I just read?

A. I do.

Q. Okay. So it mentions Section 2.02.

MS. WINOGRAD: La Asia, can we scroll to Section 2.02, please, to just try to get context for what that sentence means.

BY MS. WINOGRAD:

Q. So now we see under Article II it says -- under Section 2.02, "Changes to Employee Reimbursement. During the Term, the Parties may agree to modify the terms and conditions of NexPoint's reimbursement in order to reflect new procedures or processes, including modifying the

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Allocation Percentage (defined below) applicable to such Dual Employee to reflect the then current fair market value of each such Dual Employee's employment. The Parties will negotiate in good faith the terms of such modification."

Do you see that paragraph?

A. I do.

Q. Okay. So at any time that this Payroll Reimbursement Agreement was in effect, did anyone at the Advisors seek to modify the terms and conditions of the \$252,000 reimbursement?

A. Yeah, there was an amendment done in 2018. And the way we understand it, the intent of this was a reimbursement for actual employee. And to make that easier, instead of a monthly true-up with trying to calculate everyone's time, there was an annual amount. And the procedures then were essentially changed. In 2018, there was an annual true-up done in December. And I learned this from talking to Dave Klos and Frank Waterhouse when they first told us about the amount they had continued to charge throughout the postpetition period and why they didn't

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modify them and why there was no true-up done, that the function was at the end of the year they ran the numbers, they figured out the allocations, and we provided, I believe, in discovery the amendments that were done in December 2018. And at that point we actually owed Highland and paid it to Highland an amount for additional services. And so there was no true-up done in 2019. There was no true-up done in 2020. Our view is that it should have been done. And, in fact, the parties will negotiate in good faith as a key part of this here, the terms of any modification.

Similarly in 4.02, I think it says should either party determine a change to employee reimbursement is appropriate, we do know that Mr. Klos and Mr. Waterhouse knew and calculated and provided -- in discovery you provided us their overpayment calculations. And in the email Mr. -- I have it right here, it even says that they knew about this the year before and they were just rolling forward the analysis done for DSI the previous fall.

So there was clear knowledge by the

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Advisors -- by Highland, and they knew the intents of this was the reimbursement, and they did not modify in good faith or even tell us until we found out about it. And when we found out about it, they specifically said they couldn't even provide the calculation.

Q. Okay. So just backing up for a second, because, again, I'm just trying to understand this, so I want to take this one step at a time.

A. Yes.

Q. So Section 2.02 says -- again, it says that during the term, the parties may agree to modify the terms in order to reflect new procedures or processes, including the modification of the allocation percentage.

And you answered that there was this amendment done later in 2018. Do I have that right?

A. Yes, December 2018, there was an amendment to each payroll reimbursement for each HCMFA and NexPoint separately.

Q. And was this amendment a result of the Advisors invoking their right pursuant to

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Section 4.02 which you just talked about?

A. Again, on this, this was based on our ability to understand why the amendment was made and to what extent. We don't have an answer.

Again, we haven't completed discovery with Mr. Waterhouse and Mr. Klos. They were the ones involved in this, and so we look forward to hearing their discussion on this.

Q. Okay.

A. But our understanding was that -- and our understanding is that was done to be able to out -- to actually come up with the proper reimbursement. Because, again, the agreement is a reimbursement of actual costs of employees that were dual employees providing investment advisory services. So there is a calculation done to determine if there needs to be a true-up.

Q. Okay. So let me phrase it this way. During the time that this agreement was effective, did the parties ever -- did NexPoint ever -- did the -- did NexPoint ever notify Highland on the last business day of any calendar month that a change to employee reimbursement needed to occur?

NORRIS

A. Again, key aspect here: The Highland employees were the ones tasked with creating the calculations, making the payments. And our understanding is they were reimbursing for actual employees. And so we did not understand that they were not. And as soon as we did, we asked for a modification, right? We asked for a calculation. And I should clarify, not even asking for a modification. We -- we began to -- I should say we asked on several occasions for the actual calculation of who they were even paying for. They wouldn't provide that to us.

We asked DSI, we asked Highland, we asked your counsel for the calculations of who they were charging for which employee, and the answer eventually from your counsel was, maybe you need to file an admin claim. And so we filed an admin claim. And so we filed an admin claim. We sought out remedies at that point once we had found out. But there was -- yeah, that's --

Q. When were you -- when is the first time the Advisors asked for that calculation?

A. So we found out about this in late November, early December. And me and DC Sauter

NORRIS

asked Frank and Dave for the calculation, and they said that they will check, but they would not -- didn't think that Seery would allow it. They said they couldn't provide it. We then asked for it again. We asked for it in a letter on December 11th. We asked for it again in January multiple times from DSI, in talking to Fred Caruso, Brad Sharp. We asked again multiple times from Dave Klos and Brian Collins and Frank Waterhouse in January.

So once we found out and were frankly shocked that we were paying for these employees -- and Dave and Frank said they had talked to counsel, they had talked to Highland's counsel, and the answer was, we can't do anything about it because of the automatic stay.

And at that point we couldn't just march in and say, "Well, we're just changing the amount," because we didn't want to disrupt the challenges that we were already facing with the court, right? There was an automatic stay. And so we sought through our proper remedies an admin claim, and that's where we sit today.

Q. Okay. So just coming back to the

NORRIS

original question, you said -- and I just want to make sure I have this right -- you said before late October, early November, before this time NexPoint had not -- had not tried to change the conditions of NexPoint's reimbursement under this agreement?

A. Up until this point, we assumed incorrectly that Highland was doing the right thing and reimbursing for actual costs. What were we paying them for as our accounting and AP services, as our legal services to be able to perform under agreement and to act in good faith. So, no, we didn't know. We assumed that they were paying the actual allocations, not the allocations from January 1st, 2018, for 75 percent of the employees that are no longer even employed. Partners, I would say.

If you look at Andrew Parmentier, he was a partner who was fired before the bankruptcy filing; yet, we were paying 40 percent of his compensation from NexPoint Advisors and 40 percent from HCMFA, all the way through postbankruptcy up until the end of the agreement.

So we didn't know, and once we knew,

1 NORRIS

2 we went through our normal remedies of an admin
3 claim.

4 MS. WINOGRAD: Okay. La Asia, can
5 you pull up Exhibit 8.

6 (Exhibit 8 marked for identification.)

7 BY MS. WINOGRAD:

8 Q. Okay. Are you familiar with what
9 this document --

10 A. I am.

11 Q. Okay. This is the payroll
12 reimbursement between Highland and HCMFA, right?

13 A. It is.

14 Q. And it's effective as of January 1st,
15 2018, right?

16 A. Correct.

17 Q. And it was entered into May 1st of
18 2018, right?

19 A. I don't know if it was May -- oh,
20 yeah, first day of May 2018, effective
21 January 1st, 2018, correct.

22 MS. WINOGRAD: Okay. And can we
23 scroll to page 5 and 6, please. I think it's
24 last part of 5, beginning of 6. Thanks.

25 BY MS. WINOGRAD:

NORRIS

Q. So this agreement was signed, right?

A. It was signed, yes.

Q. Okay. Do you know who drafted this agreement?

A. I don't.

Q. Okay. So pursuant to this agreement -- so let's go back to Recital A, so we have the terms in front of us.

So pursuant to Recital A, Highland employees were to provide investment advisory services to HCMFA, right?

A. Sorry, can you repeat the question?

Q. So pursuant to subsection "A," Highland was to provide investment advisory services to HCMFA as set forth -- under the direction and supervision of HCMFA as set forth in the agreement, right?

A. I think "A" speaks for itself, but I -- and it says -- well, I don't know that this agreement mandates they perform the services, but it says we -- HCMLP will seek reimbursement for such services.

MS. WINOGRAD: Okay. Can we --

BY MS. WINOGRAD:

NORRIS

Q. Well, backing up a second, do you know if this agreement was negotiated?

A. Same answer on this one as the other one is we don't know. We weren't -- based on the conversations I had, and we're going to be -- we haven't been able to talk to Mr. Waterhouse regarding this and nor have been able to talk to Mr. Klos, and we believe that they have more information.

MS. WINOGRAD: Okay. Could we scroll to page 7.

BY MS. WINOGRAD:

Q. Okay. So similar to the NexPoint PRA reimbursement agreement we just looked at, at times I might say PRA, but I'm referring to the Payroll Reimbursement Agreement.

A. Uh-huh.

Q. These percentage allocations reflect how much time a particular Highland employee was to work on HCMFA matters, right?

A. Again, my answer for NexPoint would apply here, but you said the time they were to. I would say that was at the time -- again, I don't know how these numbers were calculated

NORRIS

specifically, but based on the agreement, this was laid out that those were the percentages of their time being spent on services provided as a dual employee for providing advice under this agreement.

Q. Okay. And did HCMFA ever seek to change the reimbursement amount under this agreement?

A. I would use my -- go back to my same exact answer I used for NexPoint Advisors. Same answer applies for both agreements.

Q. Okay. And do you know who decided these allocations? Was that Highland, also?

A. I don't know.

Q. Okay. Can I refer to the two -- like the HCMFA Payroll Reimbursement Agreement and the NexPoint one as just the Payroll Reimbursement Agreements unless I specify which one it is?

A. Yes.

Q. So at the time the Advisors entered into the Payroll Reimbursement Agreements, the Shared Services Agreement had been in effect for about five years, right?

A. At least, or approximately, yeah.

NORRIS

Q. And during those five years, were the Advisors receiving investment advisory services -- any investment advisory services from Highland?

A. I'm not certain, but maybe you could pull up the Shared Services Agreements. I think one of them we looked at earlier I think talks about investment services, and so those services may have been provided under the Shared Services Agreement. I'm trying to --

Q. Okay.

A. I know we were looking at one, and one of those under the middle and back office said investment services, investment advisory services. But so -- let me go back to your question. I don't know the answer.

Q. Okay. And that's fine.

Do you know who made the decision to enter into the PRAs or Payroll Reimbursement Agreements?

A. We don't. Based on my analysis and discussion with various people, no one had any recollection of -- of that. And so, again, you know, we're going to talk to Frank Waterhouse.

NORRIS

We haven't had access to him, and Dave Klos, who we believe were very involved in preparation and creation of these.

Q. Okay. So do you know -- do you know who decided who these employees would be that are listed here?

A. I don't, but just based on the agreement and my understanding of the intent, it was to list all of the dual employees that were providing investment advisory services to retail advisors. And having worked here, looking at the list, this looks like a comprehensive list of the individuals that were providing investment advisory services to the retail advisors at a -- not their whole time but as a percentage of their time. And I have interacted with each one of them and knew each one of them and would say this is a reasonable list of individuals that were providing investment advisory services -- employed by Highland and providing investment advisory services and acting as a dual employee of HCMLP and the Advisors.

Q. Okay. So just to sort that out a little bit, does that mean that, for instance,

NORRIS

when Highland was providing investment advisory services under the Sub-Advisory Agreement, is it fair to say that these are the people that would have been providing those services under the Sub-Advisory Agreement, also?

A. They both have the same effective date. So I don't know -- I -- going back to my other answer, I don't know the origin or the creation of that Sub-Advisory Agreement, but these people -- this is the same effective date, and this says as of January 1st, 2018. So that appears reasonable.

Q. Uh-huh. So -- and this is just me wanting to clarify what you said before. So the Advisors -- did the Advisors ever try to figure out whether the dual employees were allocating their time pursuant to this Agreement?

A. I don't know.

Q. Okay.

A. And I need to go back. HCMLP will seek reimbursement, right? A reimbursement is on their end telling us what the actual costs were. And we had a great relationship. We were affiliates. We relied on Highland. We trusted

NORRIS

their calculations and judgment. And it was their responsibility to seek reimbursement of actual costs of what the employees who were, one, dual employees employed, and, two, providing investment advisory services to us.

Q. Okay. Let's look at an example that might just make things a little bit more concrete. Let's look at Nathan Burns.

A. Yeah.

Q. You've heard his name, right?

A. I have. I've worked with him for years.

Q. Great. So he's listed as a dual employee on both of the PRAs, right?

A. Yeah.

Q. Okay. So pursuant to the NexPoint PRA which we're looking at, he was -- at the time this was executed --

A. This is the HCMFA PRA, sorry to interrupt, but you said NexPoint.

Q. Oh, got it. Okay. So, yeah, you're right. So I did mean to say NexPoint.

So pursuant to NexPoint's -- the NexPoint PRA, he was supposed to allocate

NORRIS

70 percent of the time working for NexPoint,
right?

A. I see that. I got it here.

Q. So the --

A. No, no, going back. It wasn't he was
supposed to, that's the time he would have been
spending on NexPoint Advisors work.

Q. That's -- okay. That's fair enough.
Thank you for the clarification.

And so pursuant to the HCMFA PRA
which we're looking at right now, he was --
Nathan Burns was allocating 10 percent of his
time to HCMFA matters, right?

A. So he wasn't allocating it, he was
working that amount of time, assuming Highland's
numbers are correct here. But they are
allocating his time that that's what he worked.

Q. Okay. So based on these numbers,
Highland was allocating 10 percent of his time?

A. Yeah.

Q. Okay. Was anyone at the Advisors
charged with the responsibility of making sure
that Nathan allocated 70 percent of his time to
NexPoint matters?

NORRIS

A. Again, this is -- he wasn't -- he didn't have to allocate. This is the calculation of what his time allocation was. But I can tell you just sitting here today, I can look at the numbers and I knew what people did and I interacted with them. Nate Burns' was -- primary job was Nexpoint Capital, Inc., our BDC, the healthcare-focused BDC. That's advised by NexPoint Advisors. That's 70 percent of Nate's time. So very reasonable.

We knew what these people did. It's not a big organization. But to answer your question, did we have someone at the Advisors responsible for ensuring their time was spent here? No, this is HCMLP responsible for seeking reimbursement.

Q. Okay.

A. So that's them -- they need to -- they are responsible for seeking reimbursement.

Q. Are you familiar with a former HCMFA employee named Andrew, I think, Hilgenbrink?

A. I am.

Q. Okay.

A. Sorry. Let me correct you here.

NORRIS

Andy was not an HCMLP employee, my understanding, he was an HCMFA employee.

Q. Oh, yeah. I thought I said HCMFA.

A. Maybe you did. Maybe you did.

Q. Okay. So are you aware that Andrew worked for HCMFA as a portfolio manager of a fund managed by the Advisors?

A. During which time period?

Q. Up until 2019?

A. Yes, he was the portfolio manager of the Highland Longshore Healthcare Fund. And prior to that time, he worked as an investment analyst or a senior analyst covering healthcare. He covered biotech, pharmaceuticals. He had a Ph.D. in biochemistry, Dr. Hilgenbrink. Smart guy. So, yes.

Q. Okay. So are you aware that he resigned from this position as portfolio manager of this healthcare fund on April 24th of 2019?

A. That seems about right, yeah.

Q. Okay. Are you aware that on the same date Nathan Burns became the portfolio manager of the healthcare fund?

A. I'm not specifically aware of the

NORRIS

date, but I believe Nate was portfolio manager of that fund. And I should say he was providing research to the healthcare team prior to that as well.

Q. Okay. But around that date he --

A. Yeah.

Q. -- right?

A. Yeah.

Q. Okay. So HCMFA was aware that Nathan took over Andrew's role around the time that Andrew left, right?

A. Yeah.

Q. Okay. So one year after the payroll -- the HCMFA Payroll Reimbursement Agreement became effective, Nathan started performing additional services for HCMFA, right?

A. Well, here is what I would say. Maybe not at this -- maybe the percentage allocation would have swapped, he was 70 percent of his time of NexPoint Advisors, 10 at HCMFA, combined 80. Maybe it was a movement between, and he would have allocated to the other entity. The other 20 percent, HCMLP. I would also note that I do know that Nate became a key contributor

NORRIS

to the healthcare private equity fund at that time, which he hadn't been primarily focused on.

So, yes, your point is Nate was providing more services now at HCMFA. He only has a hundred percent of his time. Was it just the movement of the 5? What is the allocation? I'm interested to see -- and one thing I would point out here, I would love to see this, is Dave Klos created this classification with Mr. Waterhouse at the end of 2020, so after this time period we're talking about where he actually calculated the amount of investment services under the Payroll Reimbursement Agreement. And we've asked for the backup of this multiple times.

Davor told me he has asked Mr. Morris for the actual support of the spreadsheet behind it, including a name of the spreadsheet, which we haven't received yet. So maybe Highland has been already allocating -- and I would hope they would, that's what we would hope that Highland was giving the proper allocation for these people's time, but we haven't seen that yet.

So I don't know if that's already

NORRIS

been updated or changed or what. Dave Klos I would assume who was the controller at that time, now CFO of Highland, would have had proper access to these numbers.

Q. Okay. So just taking a step back. Focusing on just this -- you said that HCMFA knew that he started providing these additional services relating to this healthcare fund?

A. Again, I didn't say additional services. It's he's providing additional time maybe allocated to HCMFA. Again, I don't know if it's more time. I mean, this is a really small healthcare fund with public equities. Nate was already covering securities, covering healthcare.

And I don't know the specifics of his time. I would have to look to you. We were aware that he was portfolio manager. We were aware he has been contributing names. There's a lot of things.

Q. Okay. So if he took on this new role, did HCMFA ever seek to make sure that the 10 percent allocated was still accurate?

A. Again, I'll go back to my same comments. Until late 2020, we had expected and

NORRIS

outsourced and hoped and fully believed that Highland was doing that, right? And we believed that we were reimbursing -- the intent of this wasn't to keep charging the same amount. We thought Highland was, and so we think that there should be a proper calculation done that would allocate the proper amount spent.

Q. Okay. Are you familiar with an individual named Ajit Jain?

A. I am. It's Ajit, not Ajit.

Q. Ajit. Okay. Do you know what his title was -- did he work at Highland?

A. He worked at Highland.

Q. Do you know what his title was?

A. I don't remember his specific title, but I bet you have it right there to tell me.

Q. Does it sound familiar if I say he was a risk management -- he was head of the risk management program?

A. I know he -- I don't know if I would say he's the head of risk management. Joe Sowin, I think he reported to Joe. But he oversaw risk management, yeah. And so there was some trading of derivatives and certain things he did.

NORRIS

Q. Okay. So in his role it's fair to say he performed advisory services for the Advisors, right?

A. I wouldn't necessarily say they were advisory services. I mean, risk management is more of a middle office-type function. Trading services, which were fully under the Shared Services Agreement, I would say -- I would classify Ajit more of a middle office type, back office type -- not back office but middle office services providing risk management and more of a compliance/risk management and trading service.

Q. Okay. Did Ajit provide any investment advisory services for the Advisors?

A. I don't know. I don't know.

And along with this, we're not contending that there's not a true-up of certain aspects of this that need to be made. If HCMLP has employees that they are arguing were providing advisory services, we would love to see it, but we haven't seen any yet. And we would love to have an opportunity to negotiate in good faith a resolution on it. So we're welcome to see if -- if I'm following your line of

NORRIS

questioning, you're saying that you think Ajit was providing investment advisory services. We could argue otherwise; but, you know, we would love to hear if you think there is other employees.

Q. Okay. Well, no, I mean, I'm still trying to get a sense of how these lists in these allocations work. So I'm just trying to understand, and maybe you can answer this. If Ajit was providing investment advisory services to the Advisors, do the Advisors contend -- or to HCMFA, would --

A. Yeah, maybe I think -- I think Ajit was hired -- do you have the date there he was hired? I think it was maybe 2015 or 2016.

Q. Well, he started performing services for the Advisors around May 21st of 2018.

A. So I believe he was hired in 2016, and his role remained largely the same his entire time here. So we have a point in time, January 1st, that Highland, who prepared -- we believe prepared this -- and, again, we don't have the insight of Frank and Dave and what we're going to be able to depose them, and we don't

NORRIS

have the backup of Frank's spreadsheet. But I do know very well that Ajit -- why wouldn't they have included him here as of January 1st. And I'll -- I'll stop there.

Q. Okay. So let me go back to the question I was going to ask.

So if Ajit provided investment advisory services to HCMFA, do the Advisors contend that Ajit should have been on the list of dual employees?

A. I would say -- I would say we don't believe there is anyone that's not on the list that shouldn't have been added, right? And the -- if you look at Agit's -- let's ignore Ajit. Let's look at what was provided. And even Agit's role as being -- I would say is more middle office. And we can go back and look at the agreements: trading services, compliance, risk management may even be mentioned. Those are all things Ajit was doing. I think that's probably why he wasn't included.

Again, I'm only speculating, because we haven't asked Mr. Waterhouse around why these were formed. So I would leave it as we'll wait

1 NORRIS

2 to depose Mr. Waterhouse and Mr. Klos on this.

3 Q. Okay. So are you saying -- again,
4 I'm just trying to understand what you're saying.
5 Are you saying there was nobody that was working
6 at Highland that was providing investment
7 advisory services to the Advisors who was not
8 included on the list?

9 A. In 2018.

10 MR. RUKAVINA: Objection. Form.

11 A. Again --

12 BY MS. WINOGRAD:

13 Q. Okay.

14 A. -- our understanding is that was a
15 list of the dual employees that were providing
16 investment advisory services and -- it's an
17 and -- dual employee and providing investment
18 advisory services. If Highland decided, hey,
19 they weren't going to include someone, I would
20 love to know why, but we can't speculate on that.

21 Q. Okay. So let's just go back to 2018.
22 Was there anybody providing investment advisory
23 services to the Advisors in 2018 who was not on
24 that list?

25 A. Not that I'm aware of.

NORRIS

Q. Okay. And if they were, is it the Advisors' contention that that person should have been on the list?

A. I think that's probably asking for a legal conclusion and, again, I don't -- I don't -- I'm not an attorney.

Q. Okay. But based on the terms of the -- but the purpose of the agreement was so that Highland could provide employees to service the Advisors regarding these investment advisory services, right?

A. Yes. It was to reimburse for actual services provided for dual employees that were providing investment advisory services. And I mentioned it, if there were employees that were providing those services that Highland didn't mention, we would love to learn, right? We would love to see the support and have a good faith discussion on that. And I think, you know, we'll be interested to see the calculation that Mr. Klos provided at the end of December -- or December of 2020 where he has a list of who he included -- who Highland included as dual employees providing investment advisory services.

1 NORRIS

2 Q. Okay. So if there is a person that
3 should have been included on that list because
4 they were providing investment advisory services
5 but that wasn't on that list, do the Advisors
6 contend they should have paid for that person?

7 A. Again, I'll -- I'll -- knowing the
8 process and the true-up -- I don't know what went
9 into the 2018 true-up, right? Was Agit's numbers
10 or someone else -- there clearly was someone
11 else, or we believe there was maybe more at that
12 time, or other services provided, because we had
13 to pay Highland. Clearly there is a number of
14 employees here. Our number shows it's worth over
15 \$7.6 million of services we paid for for
16 employees that were no longer there, not even
17 services but cost, reimbursement for employees
18 there were no longer there.

19 Q. Okay.

20 MR. RUKAVINA: When you find a
21 convenience time, please, let's take a break.
22 Again, no rush.

23 MS. WINOGRAD: Why don't we take a
24 five-minute break right now.

25 (A break was taken from 12:00 p.m. to

NORRIS

12:50 p.m.)

BY MS. WINOGRAD:

Q. So I just want to go back to something you said before our lunch break. You said that, and correct me if I'm wrong, but that Klos and Waterhouse did some sort of analysis that led to the amendment. Do you have the document that reflects the analysis?

A. I would say that's an assumption. I would assume that in order to calculate an amount they did an analysis, but we haven't been able to speak to them and we don't have a document relating to that. It hasn't been provided in discovery on your end, and we don't -- we aren't aware of what it looks like. But if you have that, we would love to see it.

Q. Okay. And, then, so the Advisors contend in their administrative claim, as we discussed earlier this morning, that Mr. Seery directed -- that in or around July of 2020, Mr. Seery gave some directives to the Debtor. Do you remember that?

A. I remember our discussion earlier and the question --

1 NORRIS

2 Q. Exactly. So do the Advisors contend
3 that Highland failed to perform any services
4 before July of 2020?

5 A. In regards to the PRAs, yes, right,
6 we believe that prior to that there was
7 significant overcharging with paying for
8 employees that were no longer employed. But as
9 far as damages and calculations that we're
10 proposing here on the Shared Services Agreement,
11 it's that period beyond. What I talked about, it
12 was having to hire an outside attorney, having to
13 bring in Mr. Post.

14 Q. Okay.

15 A. And there may have been services that
16 had been reduced, right, and I would point to
17 those are the specific ones that we can point to.
18 But if there were services prior that we were
19 being charged for that we weren't receiving, then
20 that should be calculated in as well. But we
21 haven't finished our deposition of Mr. Klos and
22 Mr. Waterhouse, who are closest to that
23 information.

24 Q. Okay. And, then, do you remember
25 when I asked you a couple of questions about the

NORRIS

sub-advis- -- the NexPoint sub-advisory agreement?

A. I do.

Q. And do you remember when you said that the NexPoint PRA replaced the sub-advisory agreement?

A. I think I said I thought. I don't have all the details of what went into that, as I explained. And we don't. So, yes.

Q. Okay. So why do you think the PRA replaced the sub-advisory agreement?

A. They had the same intent of investment advisory agreements. And based on the limited knowledge that we're able to gain was that it was a replacement, right? But that was put in place, and there was some advice from counsel that it needed to be drafted in another way, that it couldn't just be an absolute payment or an advisory agreement. It had to be a reimbursement for services provided. There was sensitivity from the '40 Act perspective that you can't have a profit center at an affiliated Advisor, and it needed to be a reimbursement. So that's the limited knowledge we have. Again, we

NORRIS

haven't been able to talk to Mr. Klos and Mr. Waterhouse, who we believe have more information on that.

Q. Okay. So do you know whether the sub-advisory agreement would have required a vote of the retail funds?

A. A vote of retail funds? No, there wouldn't be -- the Advisor enters into the agreements. However, yes, there is no vote of the retail funds related to advisory, sub-advisory or Shared Services Agreement.

Q. Okay. So like the sub-advisory agreement didn't meet any kind of shareholder approval?

A. No. We have exemptive relief. And, again, I don't know how this one -- just generally a sub-advisory agreement we have exemptive relief to appoint sub-Advisors without the vote of shareholders.

But, again, this particular instance, an affiliated sub-advisor, I don't know what analysis went into it and what would have been the requirement.

Q. Okay. So Mr. Waterhouse was the

NORRIS

treasurer of NexPoint during the time the Shared Services Agreement was in effect, right?

A. I don't know if it was the entire time the Shared Services Agreements were in effect, but for a portion of it.

Q. Okay. But you said that he was the treasurer of the Advisors for a portion of the time these agreements were in?

A. Correct.

Q. Okay. So as his role, he was -- is it fair to say he was involved in the financing of the Advisors? Let me rephrase that. In the financial affairs of the Advisors?

A. Well, we had outsourced to Highland the books and records for the actual Advisors as well. So the accounting team at HCMLP and all the accounting team members performed those accounting functions for the Advisors.

Q. Okay. So the Advisors relied on Highland to make determination regarding the accuracy of the allocations in the PRAs, right?

A. You want to repeat that one more time.

Q. So you had said earlier -- and

NORRIS

correct me if I'm wrong -- but that the Advisors relied on Highland to make sure that the allocations in the PRAs were accurate, right?

A. We had relied on them to actually submit reimbursements for the appropriate amounts and pay the appropriate amounts, yes.

Q. And to make sure that an employee on the PRA list, that that percentage allocation was accurate for a particular employee, right?

A. Generally speaking, we assumed that those numbers were being updated and were accurate. And there was an operating procedure before bankruptcy where they did a true-up, as you talked about, at the end of 2018. And so they had been -- up until that point we assumed they had been continuing to do so.

Q. Okay. And did the Advisors, when they were advising -- when they were relying on Highland, were they also relying on Mr. Waterhouse?

A. I don't know if Mr. Waterhouse -- again, we haven't had the chance to depose Mr. Waterhouse, but it was the accounting team: Mr. Klos, Mr. Waterhouse, Hayley, Kristin. There

NORRIS

was a team of people involved that were Highland employees tasked with the accounting.

Q. Okay. So it's fair to say Mr. Waterhouse was on that team?

A. He was the CFO of HCMLP.

Q. So he was involved with that process, then, right?

A. I would think so. Again, we haven't asked Mr. Waterhouse. We didn't have access to him prior to this. So we look forward to what we'll hear from him.

Q. Okay. So I want to just hear more about what -- you mentioned there was this true-up. What is a true-up?

A. Yeah, so -- and I call it a true-up because that's the terms that Dave Klos told me that were used. But essentially it is a -- it is very challenging on a monthly basis to figure out what the allocations were, figure out who the employees were, because things did change, as we see. There was a number of employees, almost 75 percent of the schedule, maybe more, that were no longer employed.

And so they would do a calculation to

NORRIS

say, I'm assuming -- again, we haven't spoken to Dave and Frank to try to understand the process -- but assuming that the process was, given what they told us a true-up, what are the actual expenses. The true-up was not done in 2019 and 2020. There were no adjustments made. And even in 2018 when it happened, we wrote a check -- the Advisors wrote a check to Highland because we consumed additional services. We very clearly believe, and I think there's plenty of evidence here, that we overpaid in '19 and '20, but there needs to be a true-up.

Q. Okay. So in simple terms, a true-up is -- so it's an analysis that helps the Advisors understand if the payments they were making were for the employees that they had assumed were there at the -- working for the Advisors?

A. I wouldn't say it's to help us assume or understand the allocation. It's to figure out what the true reimbursement amount is.

Q. Okay.

A. And that is what is the actual costs incurred, and reimburse that. And so it wasn't something that was done, our understanding, prior

NORRIS

to the end of 2018, because operationally it wasn't efficient. And so they did it once a year. Would it have been done in 2019? Dave Klos said yes, but they filed for bankruptcy in October, and for whatever reason, they decided not to do it.

Q. Okay. So the true-up would have been done at the end of 2019?

A. That is our understanding.

Q. Do you know around what month in 2019?

A. It was done in December of 2018. One could speculate -- again, agreements were put in place in January 2018. They did it in December 2018. Logically, it would be an annual process, and Dave even said it would have been done at the end of the year. Seems like the year-end would be a great time to do it.

Q. Um-hum.

So was it the Advisors' contention that the true-up wasn't performed in 2019 because of the bankruptcy?

A. We were told by Mr. Klos and Mr. Waterhouse that there were no adjustments.

1 NORRIS

2 The amounts continued because of, they thought,
3 the automatic stay prevented it. And so that was
4 their contention. And, again, our recourse here
5 was to file an admin claim, and that's -- that's
6 the route we went.

7 Q. Okay.

8 MS. WINOGRAD: La Asia, can we show
9 Exhibit 14, please.

10 (Exhibit 14 marked for identification.)

11 BY MS. WINOGRAD:

12 Q. Mr. Norris, are you familiar with
13 this document?

14 A. I am. I believe I have it printed
15 here, if it's the same one. Hold on.

16 This is Defendants' Objections and
17 Responses to Plaintiffs' Requests for Admissions.

18 Maybe you can scroll down, and I can
19 look at the document?

20 Q. Yeah, why don't we do that.

21 A. I believe this is the ones responsive
22 to discovery and --

23 Q. Yes.

24 A. Okay.

25 Q. These are the Advisors' responses

NORRIS

responsive to Highland's discovery request,
right?

A. Here it is. I believe it's the same
one. 18 pages long? Yes.

Q. Okay. Is the information contained
in this -- in these responses, was it true and
accurate at the time it was written?

A. Yes.

Q. Okay. Do you think there is anything
that needs to be amended?

MR. RUKAVINA: We -- I'll answer
that. We're going to supplement one of the
interrogatories.

If you can scroll down.

We are going to supplement an
interrogatory. I'm trying to find the document.
Oh, I'm sorry.

I'm sorry, Ms. -- okay. She just
shared it.

MS. CANTY: It's also in the Chat,
guys.

MR. RUKAVINA: I just did that. Let
me just pull it up.

MR. MORRIS: Can you just tell us

1 NORRIS

2 what the amendment is?

3 MR. RUKAVINA: Well, that's what I'm
4 trying to --

5 MR. MORRIS: Okay. I'm sorry.

6 MR. RUKAVINA: If you would, maybe
7 it's fastest if you scroll down through the
8 interrogatories.

9 MS. WINOGRAD: They start at -- go to
10 page 11, I think. Yeah, there we go.

11 MR. RUKAVINA: All right. Please
12 scroll down. Stop there.

13 Please scroll down. Stop there.

14 Please scroll down.

15 All right. Scroll back up to 12.

16 Okay. Then, I apologize, maybe I'm
17 wrong. We were going to -- just so, John, you
18 know, we were going to change the amount of
19 damages from 14 million to 10 million. I'm using
20 round numbers. I thought it was in here
21 somewhere but I don't want to waste --

22 MR. MORRIS: All right. But he's
23 going to testify to it anyway when I ask him
24 about damages.

25 MR. RUKAVINA: Then I apologize

1 NORRIS

2 for taking everyone's time.

3 MR. MORRIS: No problem.

4 MS. WINOGRAD: I'm sorry, can you
5 hold on for one second?

6 Okay. Can you hear me okay?

7 THE WITNESS: I can.

8 BY MS. WINOGRAD:

9 Q. Okay. So can we scroll to page 12,
10 please.

11 Okay. Do you see here in
12 Interrogatory Number 3, Highland asked the
13 Advisors to identify the date on which they
14 believed that the former dual employees
15 identified on the lists we just discussed
16 attached as Exhibit A departed the Debtor? Do
17 you see that?

18 A. Yes.

19 Q. Okay. And then in the Advisors'
20 response they list all of the dual employees and
21 then the corresponding date that they contend
22 those employees departed the Debtor?

23 A. Yes.

24 Q. Okay. And so the Advisors -- the
25 Advisors were generally aware of the employees'

1 NORRIS

2 terminations and departures as they occurred,
3 right?

4 MR. RUKAVINA: I think there is a
5 question on here.

6 MS. WINOGRAD: Yes, it's the next
7 one.

8 THE WITNESS: Yeah, let's go to the
9 next one, and I would say our response is
10 accurate.

11 MS. WINOGRAD: Okay. So we can just
12 scroll through it, La Asia.

13 A. There you go. The Advisors were
14 generally aware of the employees' terminations
15 and departures as they occurred.

16 BY MS. WINOGRAD:

17 Q. Okay. So does this mean that the
18 Advisors became aware of the employees'
19 departures at the time the employees left?

20 A. As they -- maybe not the same day,
21 but we were generally aware. We knew people had
22 left. We also receive a monthly report from HR
23 at HCMLP of employees that had departed.

24 Q. Okay. Great.

25 So within a week were the Advisors

NORRIS

generally aware that employees had left?

A. Again, so there's a monthly report, if it was the beginning of the month, it may have been a month, but generally as they occurred.

Q. Okay. So for any --

MS. WINOGRAD: Can we go back to page 12, La Asia.

Thanks.

BY MS. WINOGRAD:

Q. So for any of the employees listed here, if we could scroll down just a tiny bit, and then a little bit more, because I think there is one employee -- there we go. That's fine.

For any of the employees listed here, did the Advisors exercise their rights under Section 4.02 of the Payroll Reimbursement Agreement after they left?

A. 4.02. The Advisors?

Q. Do you want to go back to Section 4.02, or do you have it in front of you?

A. Yeah, I think -- and if I'm looking at this as -- hang on, I'll come back to it.

I would say it gets back to we were aware they left. We had relied on Highland to

NORRIS

perform the calculations. And 4.02 clearly says, should either party determine that a change to an employee reimbursement is appropriate, Highland knew they had left, they knew they continued to charge us more. Why didn't they make an update, right? And that's our contention.

We relied on Highland to do the calculation, as I discussed earlier, and we assumed, and appropriately here, that they were doing that. Again, that wasn't the fault of the individuals. They were told they couldn't because of the automatic stay, and they even had the overpayment calculation, what the actual proper calculation should be.

And again, we haven't received the backup detail from Mr. Klos's calculation. But looking at the numbers, she was calculating an actual amount when they had dropped these employees.

Q. Okay. But the employees didn't -- did the employees ever ask Highland if the list should be -- if the allocation should be changed?

A. The employees, as in these employees that left?

NORRIS

Q. Yeah, locations on the list, yeah.

A. I don't know that these employees were involved at all in the calculation or the allocations. The employees leaving requesting a change to the allocations, the employees didn't really impact that, to my understanding.

Q. So you're saying that if an employee on the Exhibit A of the Payroll Reimbursement Agreement left, then that wouldn't affect that person's name appearing on that list?

A. It would, but you asked if that employee would ask for the allocation to be updated.

Q. No, no, I think that -- let me -- I think there was a misunderstanding.

So after an employee left, did the Advisors ask Highland if -- if the -- if the list should be updated?

A. We had hired Highland for accounting, payables, all of this, including the calculations within that realm. We thought that they had -- that was being updated, right? And it wasn't. Or maybe it was, they just didn't notify us or bring it to our attention because they were told

NORRIS

they could not.

Q. But the Advisors -- but the Advisors kept paying Highland the same amounts per month even after certain employees left, right?

A. No, the Advisors never voluntarily said, yeah, let me pay the same amount. We were under the understanding that Highland, who was handling our payments -- again, the entire Highland accounting team had access, was creating the calculations, created an invoice for the wrong amount, transferred the cash, had access to our bank account, with no one at the Advisors even knowing that was happening.

And so we didn't -- we didn't pay. It was paid by Highland employees, and that was the process.

Q. Okay. So after any of these employees departed the Debtor, were there any specific services that the Advisors stopped receiving from Highland?

A. Yeah.

Q. Can you identify an employee who got -- you know, who that would apply to?

A. Yeah, that's just -- here is one real

NORRIS

easy one: Trey Parker. He was the chief investment officer. He left. Joe Sowin was appointed as chief investment officer or co-CIO with Jim. Joe Sowin is an HCMFA employee. And that's a simple one.

John Poglitsch, head of credit research, left December 22nd, 2020. There was no head of credit research when John left employed at HCMLP providing that service.

Yeah, I can go down the list if you want, but, you know, there is -- each one of these, there was not a hire made to replace, my understanding, any of these people by HCMLP. They were in bankruptcy, right? They were a debtor in possession. They weren't hiring new people to replace these individuals.

And so that is -- that's our belief and our position.

Q. Okay. So I'm going to skip ahead to a question here about Trey Parker because you just mentioned him. So what title -- can you repeat for me what title Trey Parker held?

A. He was co-CIO.

Q. Okay. So he held the title of

1 NORRIS

2 co-head of private equity; is that right?

3 A. He may have.

4 Q. Okay.

5 A. I don't know. In his actions
6 regarding our retail funds, the co-CIO is the
7 role in which we interacted with him.

8 MS. WINOGRAD: Okay. La Asia, can
9 you put up Exhibit 14 for a moment.

10 MS. CANTY: This is 14.

11 MS. WINOGRAD: I'm sorry.
12 Exhibit 34.

13 (Exhibit 34 marked for identification.)

14 BY MS. WINOGRAD:

15 Q. Okay. So this is Trey's compensation
16 statement. Right?

17 A. Yeah.

18 Q. Okay. And it says here that he has a
19 title of partner co-head of private equity,
20 right?

21 A. According to this.

22 Q. Okay. So it's fair to say that was
23 his title at Highland, right?

24 A. I mean, at the top it says partner
25 and co-CIO, which is --

NORRIS

Q. Okay. But it says that effective March 1st, 2019 his new title will be partner co-head of private equity.

A. Got it. And maybe it was at that time that Joe Sowin took over the role, again, an HCMFA employee.

Q. Okay.

A. Maybe at that point Trey Parker wasn't providing as much services to the retail advisors. Because the private equity was largely on the institutional side and -- so, yeah, I see what it says here in the title.

Q. Okay. I just wanted to make sure we were on the same page about what his title was.

MS. WINOGRAD: La Asia, can we go back to the Exhibit 14, please.

Thank you.

BY MS. WINOGRAD:

Q. So in his role, what services did Trey perform?

A. Yeah, he was the portfolio manager for our Highland Floating Rate Opportunities Fund, changed its name to Highland Income Fund. He was a portfolio manager on the Opportunistic

NORRIS

Credit Fund. He helped manage the investment services of our credit investments that were in our retail funds.

He also handled private equity investments of which the Debtor had a significant portion on their balance sheet. And so -- but his largely was the overseeing the investment process.

And how that applied to our Advisors was he was a named portfolio manager on a couple of our funds, including the Highland Income Fund, the Opportunistic Credit Fund, maybe another fund or two, but those were his primary duties in interacting with us.

Q. Okay. Are you familiar with TerreStar Investments?

A. I am.

Q. Okay. Did Trey perform investment services for TerreStar?

A. My understanding is that he did.

Q. Okay. And TerreStar was a big investment held by the funds, right?

MR. RUKAVINA: Objection. Form.

A. Yeah, big? Sorry.

1 NORRIS

2 BY MS. WINOGRAD:

3 Q. How would you categorize it?

4 A. It was a material position held by
5 one fund and held in a few of our other funds.
6 Yeah.

7 Q. Okay. So it was a significant
8 investment for the funds, right?

9 A. Funds, plural, no. One singular
10 fund, it was an important position.

11 Q. Was it -- was it a significant
12 investment -- investment for the Global
13 Allocation Fund?

14 A. Are we talking a legal term
15 "significant"?

16 Q. Was it a large investment for the
17 Global Allocation Fund?

18 A. By and large.

19 Q. More than -- among the top ten or
20 just holdings for the fund?

21 A. Yeah, yeah.

22 Q. Was it among the top --

23 A. Sorry, go ahead.

24 Q. I was just going to say, is it among
25 the top ten largest holdings for the NexPoint

NORRIS

Strategic Opportunity Fund?

A. I don't know on the position side.

It was much smaller in that fund.

Q. Okay. Nexpoint Capital, Inc., was it among the top ten largest holdings of this fund as of 2020?

A. I don't know without having the answers -- again, this is not something I believe was on the preparation material, so as the -- I'm not prepared to answer the holding sizes of positions. But that would be factual information that you could find.

Q. Okay. But TerreStar was -- but TerreStar was a significant investment for some of the funds, right?

A. At least the Global Allocation Fund. Again, we haven't defined "significant" but it was a top ten position, if that was your definition. That one, I do know. On the others, I don't know if it fell into the top ten or was further down, but I know it was much smaller than the other funds.

Q. Okay. So is it fair to say Trey spent a significant amount of his time servicing

NORRIS

TerreStar?

A. I don't know that's the case. It was one position. I think they covered hundreds of positions. So I don't know what times -- you know, Trey's time was allocated to TerreStar.

Q. Okay. Do you have, like, a rough estimate of what percentage of Trey's time he spent on TerreStar? Was it over 50?

A. Oh, I would imagine it's much smaller than 50, but I would be speculating. Again, I think they covered hundreds of positions, and he was the CIO and, you know, head of credit research before that. He oversaw the investment process and he had a large, you know, commitment of time.

My understanding of TerreStar is there was only two board members. Trey was one of them. And there was periodic meetings. But it was not an operating company, it's an asset. But I don't think there was that much ongoing time, based on our understanding. But I don't -- I'm, again, speculating.

Q. Okay. So when -- so the Advisors contend Trey Parker left the Debtor on

NORRIS

February 28th of 2020, right?

A. Based on this schedule, which I believe these dates were taken from the Debtor's schedules that we received from Debtor employees.

Q. And when Trey left, did the Advisors exercise their rights under Section 4.02 and Section 2.02 of the PRA?

A. I'll just go back to my previous answer on that. When you asked about any of these employees, it's the same answer.

Q. After Trey left, did the Advisors stop receiving investment advisory services relating to TerreStar?

A. Not that I know of.

Q. And after Trey left, did the Advisors stop receiving any of the investment advisory services that Trey had performed?

A. Certainly, yeah. There was a lot of his time allocation that there was no replacement person. We certainly -- there was -- you take a senior partner away, who was doing a lot for our funds, we had to replace him with HCMFA employees.

Joe Sowin, I know, was appointed as a

NORRIS

portfolio manager of one of the funds. One of the other funds we had to liquidate. So, yeah, we had a drop-off. We didn't receive any replacement services largely for what Trey performed.

Q. Okay. So you mentioned specifically the services that he was -- what were the services that he was providing that you're saying were no longer provided?

A. Yeah, the -- the day-to-day -- let's go to -- let's go to his payroll reimbursement, for Trey Parker is 30 percent of his time to HCMFA and NexPoint Advisors is 15 percent maybe.

So you take approximately 45 percent of a person's time that was at some point committed to these Advisors, and he leaves, there was no person hired to handle the credit research, there was no person hired by HCMLP to handle his portfolio management duty, and the income -- the Highland Income Fund was a billion dollar fund. Right? There was a lot going on with that fund.

The Opportunistic Credit Fund, which Trey was a portfolio manager of. We didn't have

NORRIS

a replacement portfolio manager, support management services, credit research, all of those, those services. He also did some public equity stuff, oversaw a lot of the investment profits. So I do know that -- yeah.

Q. So as a result of Trey's departure, were the Advisors unable to perform certain services to those funds that you just mentioned?

A. No. We had to adjust -- right -- and reallocate our existing resources. I mentioned reallocating Joe Sowin as a portfolio manager. Jim had to step in where he didn't before previously before do some of the day to day in some of the investments. We have other employees that are at the Advisors that are front office employees that had to pitch in and perform those duties.

Q. And are those -- did that -- did that cost the Advisors to incur additional expenses?

A. None that -- I guess in this instance we're asserting that we paid for services we weren't receiving. Right? I'm not prepared to talk about other additional costs. I'm sure, again, we had to reallocate people and time, so I

1 NORRIS

2 don't know the answer to that.

3 Q. Okay. You just talked about those
4 services that the Advisors were no longer
5 receiving as a result of Trey's departure --

6 A. And here is another point on that, to
7 be -- you know, Trey's departure came at a time
8 when the -- and going back to our firm, a lot of
9 what he had been focused on, our credit business
10 went from having 20 analysts at Highland to, I
11 don't know, a handful, maybe three, two. The
12 private equity book had shrunk significantly.
13 And so his responsibilities over time related to
14 our Advisors had also shrunk.

15 And so are we able to continue
16 performing our services, yes, with the existing
17 resources and maybe we had to hire one or two
18 more. And then eventually hired some of the
19 front office people from Highland to help fill
20 those holes after the transfer.

21 Q. Um-hum. And so -- when this was all
22 happening, did the Advisors tell Highland that it
23 was unable to perform these services -- that the
24 Advisors were unable to perform these services?

25 A. Well, no, because we didn't tell them

NORRIS

that the Advisors were unable to perform the services because Highland was in bankruptcy, we were aware of that. We were performing them ourselves at this point. We were not unable, we were able to perform the services.

Q. I'm sorry, say that last part again. I don't think I understood you.

A. Yeah, you asked did we tell them we were unable to perform these services, and I said, no, we didn't tell them that because we were able to. We didn't tell them we were unable to, we were able to. And we were performing the services.

Q. Okay. I thought you just said that after Trey left the Advisors weren't able to perform certain services for the funds when Trey left, right?

A. What I -- and maybe you misunderstood. Highland didn't perform those services, the Advisors, our Advisors had to step in.

Q. Okay. And then my question is after Trey left and the Advisors were no longer able to perform these services, did the Advisors tell

NORRIS

Highland that the Advisors were not able to perform certain services?

A. No, because we were able to perform the services.

Q. Okay. So you're saying -- are you saying -- you said that the Advisors weren't able to perform certain services, but then are you saying --

A. I don't think I said that.

Q. So -- okay. So --

A. And maybe I misunderstood your question.

Q. Okay. Let's take a couple of steps back.

So after Trey left, you're saying the Advisors weren't receiving certain services from Highland that Trey had been performing. Right?

A. Correct.

Q. Okay. So does that mean that as a result of Trey's departure, the Advisors were not able to perform its own services to the funds?

A. No. We, with our personnel, were able to perform the required services under our advisory agreements.

NORRIS

And some of that was spread to other Highland employees, it wasn't just that Trey left, it was, okay, well, now, Matthew Gray, you're going to cover this name and, you know, whoever else is still here is going to cover a different name. Nate Burns, you know, you are going to cover that. And they reallocated his work without hiring additional people.

Q. Okay. And so then when you're saying that you guys had to shuffle things around and hire other people after Trey left, did the Advisors tell Highland that that was going on?

A. At this time we were all under the same roof. Right? This is February 2020, beginning of bankruptcy. We're all working together. We knew what the responsibilities were. It wasn't -- so certainly Highland, you know, the Advisors and Highland had that communication, because we were working closely together.

It's not the position you sit in today where we're in separate offices and there is litigation back and forth. It's a frame February 2020, there was a belief that the

NORRIS

bankruptcy would happen very quickly. Trey Parker had already planned to leave pre-bankruptcy, or just after, my understanding. But in anticipation that this would be a quick resolution, and all these people were working closely together cooperatively with no issues.

Q. Okay. So just to make sure I have this right, you're saying that when Trey left, the Advisors reshuffled things, hired their own people to replace Trey's services, were no longer able to receive certain services from Highland and didn't tell Highland directly that it was -- that it was reshuffling things?

A. I think that's a -- that's not the way at all that I would explain it. I explained it that we were all there -- there was not like, let me formally send Highland -- we were in the same office working collaboratively together as affiliates, right, up until just, you know, around that time.

And so it was very -- I mean, some -- you were literally in the same office. Some were Advisor employees, some were HCMLP employees. They worked closely together. And with Trey

NORRIS

leaving, all right, we're going to -- some of HCMLP employees will do the job and some of the Advisors -- a lot of it was the Advisor employees, including the key -- the key aspects of his job of portfolio management, which we used our existing advisor employee Mr. Andrews for his replacement.

Q. Okay. So let's stay on this list for a second. So it says on this list that Michael Phillips left Highland February 20th of 2018, right?

A. Yes.

Q. And then Jake Tomlin left Highland February 20th of 2018, right?

A. Yes.

Q. Sanjay Gulati left March of 2018?

A. Yes.

Q. Phil Ryder left Highland April of 2018, right?

A. Yes.

Q. So there is a total of four employees that left Highland before May 1st of 2018, right?

A. I can't see the top, but if you tell me that's the case, then that's the case.

NORRIS

Q. Okay. We can scroll up a little bit.

Okay. And this was before the Payroll Reimbursement Agreements were executed, right?

A. Yes. But that was effective January 1st, 2018. So before they quit, the effectiveness of the agreement.

Q. Okay. But the Advisors were aware -- excuse me -- of these four employees' departures prior to executing the payroll reimbursement, right?

A. Again, that would be on Frank. The Advisors -- I go back to my same answer. We knew when employees left, and we relied on Highland for the actual preparation of the calculation.

Q. Okay. So let me ask you this. Did anybody at the Advisors review this agreement before the Advisors entered into it?

A. We don't know.

Q. Okay. So the Advisors may have entered this agreement without understanding its terms?

A. Again, we haven't deposed Mr. Waterhouse, who signed the agreement, I

NORRIS

believe is what -- this specific agreement.

And you've got to believe -- I can't -- as an individual looking at this, say, oh, we knew nothing, we didn't understand the agreement. There was knowledge entering into the agreement, we just need to understand from Frank and Dave what the process and who those were involved.

Q. Okay. So the Advisors entered into this agreement knowing that four of those employees were no longer working at Highland?

A. I don't know if that's -- I don't know.

But, again, the effective -- there is a really clear reason why you would want to include them. It's effective and payments were effective as of January 1st. So for the sub-period that they were employed, they would have paid for their costs. So it was logical to think that even if they knew that they were no longer employed, that they would include them on there because they were employed effective January 1st, and there was work performed.

Q. But they weren't going to be working

NORRIS

after May 1st of 2018, right?

A. Yes, exactly. And that is exactly why we shouldn't be paying for them. And why we were shocked that we continued to pay at the same rate in 2020, the end of 2020, for exactly the people that were no longer employed in February 2018, well before the actual filing of the bankruptcy.

So there was obviously a true-up in 2018, so one would speculate that Mr. Klos updated for those and factored that in, and we would hope that's the case. But nothing happened in 2019, nothing happened in 2020, and the amounts that are considered on here and the amounts paying match up to what these employees were as of this date.

Q. Okay. But if the -- if the Advisors don't contend that they shouldn't have been paying for these four employees, why did they enter into an agreement to pay for these four employees?

A. Again, the effective date is January 1st. Again, and I don't have all the background. I'm sure Mr. Waterhouse and Mr. Klos

NORRIS

would have a good understanding, but one could speculate, and I don't have to tell you, one could speculate that that's fair, they are going to be paid during that period, and after that they wouldn't be paid. Because it's actual cost, it's reimbursement for services of people that are dual employees. If they are not longer employed, logically you would think, sure, of course we're not going to pay them. Why in the world would you pay for someone that is no longer employed?

And so logically that was actually the intent of the agreement. They would drop off, okay, we are not going to reimburse because they are no longer employed and they're no longer providing services.

And this states -- the agreement clearly states we reimbursed for employees that are, one, employed as a dual employee, and, two, providing investment advisory services.

So, again, speculation, but it seems completely reasonable to me why they would have included them if the effective date is January 1st.

NORRIS

Q. But if the Advisors knew of their departures around the time they left, why didn't the Advisors exercise their rights under Section 4.04 to adjust the allocations?

A. I'll go back to my previous responses on the same topic, which is, we relied on Highland, and you can go look at every other response I had on this. And we assumed that it would be done the correct way, and in 2018, our understanding is it was.

There was a true-up in December. And so why didn't we adjust it? Well, the operating procedure at that point was to adjust at the end of the year. There is nothing in these agreements that say you can't adjust something after the fact, and that was what was done, and we expected it would have continued to be done after that.

Q. So if you were relying -- if the Advisors were relying on Highland to make sure all of these allocations were accurate, what was the purpose for Section 4.04?

A. That's a great question. Again, we weren't involved in the drafting of agreements.

NORRIS

And I think that the intent is very clear in what an agreement -- the agreement is for. It's a reimbursement. Right? It's not, you're going to pay a fixed cost to us. It's, you are going to reimburse for actual cost of what it cost to employ someone as a dual employee and if they are providing services.

That is the intent of the agreement. And I don't know how you interpret reimbursement as anything other than paying for someone that's provided -- it's a reimbursing.

Q. So I understand that you're -- that the Advisors are contending that they have relied on Highland to ensure that these allocations were accurate, but did the Advisors have any way of ensuring that the allocations were accurate?

A. We, as I already said, we didn't have a separate group running calculations. We don't have an accounting group. We don't have a legal services group. That's why we paid Highland to do this. So we didn't have a way of double checking or hiring someone else to come in and sleuth it because that was what we paid Highland to do.

NORRIS

Q. Are you aware that certain employees of Highland took over Trey Parker's title after he left?

A. Which title?

Q. The co-head of private equity.

A. I'm aware that the -- there were some people in the legal team that had already been providing similar services to some of these companies, were given certain additional titles, so their titles of counsel or general counsel or whatever. Our understanding of that and our position is that that was somewhat of a carrot. During the middle of bankruptcy, we need to provide something for employees to -- additional for them to feel good about, and it was in addition to their other services that they were providing.

Q. Okay. Are you aware that on the very day Trey Parker left, JP Sevilla became co-head of private equity?

A. I believe that your documents you sent over last night, that was the first time I had realized that or seen that. And, again, given that I'm here, it wasn't allowed. Now JP

NORRIS

1 is doing Trey's job. It was a maybe you could
2 help cover one of the names from a legal
3 perspective. And, again, context is important.
4 2020, we had a whole team of talented people.
5 You file for bankruptcy. You've got to try and
6 retain them. And giving people additional titles
7 is a carrot, right, and I think that's a big part
8 of it. And maybe we can ask JP how did -- how
9 did his role change? Our view was it didn't
10 change really at all. Maybe there was a little
11 bit of an allocation, that he was performing
12 work, as we know he was on TerreStar. Did he
13 attend a board meeting once a quarter, what was
14 his time allocation. Again, I mentioned before,
15 if there's a good faith estimate or, you know,
16 something that the Debtor would like to
17 negotiate, we would love to hear it.

18 In this instance, due to, you know,
19 he was helping with TerreStar, maybe there is a
20 time allotment, and we can get J.P.'s time,
21 right? But that -- he did not take over the job
22 of Trey.

23 And as I mentioned before, private
24 equity was on its downswing. You can probably
25

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look and track the private equity investments. Trey's main job related to our Advisors was a portfolio management role, an investment analyst role for our closed-end fund, our open-end fund, and overseeing the profits on the investments that rolled into -- rolled into our funds. And nobody stepped in from that legal team to do those services.

Q. So when JP took over Trey's title on the day Trey left, did JP start performing any of the functions that Trey performed previously?

A. I don't know. I would have to ask. I'm not -- other than helping with TerreStar, I think it was probably -- I think it was a group effort. I know Jim pitched in. I know there were other people. It was a group effort. But, again, a company with no operations, no cash flows, it's literally an asset. And so I don't know what else JP did, but we can certainly ask him.

Q. Okay. But JP did start helping on TerreStar, right, when Trey left?

A. I believe that's the case, but I'm not certain. I know he had given a few updates

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occasionally. My interaction there was very limited because I don't think there was much for him to do.

Q. Okay. But TerreStar -- okay. So -- so did the Advisors contend that they shouldn't pay for J.P.'s time working on TerreStar?

A. If there was a portion of his time, again, we'd love to hear if he was providing investment advisory services. If he's providing legal and compliance services related to a company that one of our funds owns, then, again, there's splitting hairs on what it actually was that he did. But, again, you mentioned there was a significant size of his overall allocation time. Doesn't mean there was a lot of work involved when JP came in.

Q. But even if JP spent, let's just say, an hour a week on TerreStar, do the Advisors contend they shouldn't have to pay for that?

A. Again, like I said, we are open to hearing, and specifically if there are areas where people who were providing were dual employee, one, and providing investment advisory services that meet the definitions of the

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agreement, we're happy to discuss that. And if there should be a true-up, let's do a true-up. That's what we've been clamoring for since we first found out about this. And so definitely open to hearing what you have from a document in evidence standpoint.

Again, I'll go back to in December 2020, the Debtor's CFO and Controller created a calculation of what the front office services should have been for 2020, and that was well after Trey Parker left and JP was appointed co-head of private equity and continued his normal role as associate counsel or whatever he was at HCMLP. But we haven't had the backup yet. Maybe it's already in there or maybe it's not, but if it's not, I would be curious on why Dave wouldn't have included that if HCMLP knew you was providing those services.

Q. So there was a group of people that started working on TerreStar after Trey left, right?

A. I don't know if "a group of people" is accurate. I mean, he is who I heard a couple of updates from. And, again, I don't know if

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there is a material amount of time. I guess one hour a week -- sure, let's run the numbers. One hour divided by his sixty hours, it's 1.6 percent of his time. And if his pay is, let's just assume, I don't know, \$600,000. 9,999. We'll cut you a check for that amount. And our numbers we're showing are \$7.7 million. So I think we're talking about a small amount. But we're open to it. We've asked. We've asked for what we were paying for. We've asked many times over many, many months and haven't received it until discovery. And so we've been open all along to have those conversations and would love to do it.

When I say write that check, I say that somewhat sarcastically. We overpaid by 7.6 million. So we can net it against at least the 7.6 million. Dave Klos' number is actually larger. He shows a larger amount. We'll get into damages when we talk with Mr. Morris. But we're not contending that we shouldn't pay for dual employees that are providing investment advisory services.

Q. Okay. But, again, you are not contending that what? I couldn't hear that last

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part.

A. That we shouldn't pay for dual employees that are providing investment advisory services under the Payroll Reimbursement Agreement.

Q. Okay. So were there employees providing advisory services that aren't part of this list?

A. We don't believe there is.

Q. But didn't you just say JP Sevilla was providing advisory services?

A. Again, I don't -- advisory -- I wouldn't contend that at all, and I didn't say that. He was sitting on the board of a portfolio management company I believe that was already owned, that was already in operation, and he wasn't giving any recommendations, to my understanding, in advisory service on what we should do with TerreStar. He was acting in an operational or legal capacity. So we would contend that, no, that's not investment advice. He wasn't giving advice. He was providing information for the company, very standard from a legal and compliance perspective.

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Q. Okay. Are you aware that five other employees got title changes the day Trey left?

A. I believe I saw that in the documents you sent last night, uh-huh.

Q. Okay. And just tell me again -- if you have already, I apologize -- but I'm just trying to understand why did this -- why did this all happen the day he left?

A. Yeah, again, I'll go back to our view is, look, you had someone that was high profile leave. He left when private equity had diminished, and there were a lot of employees who wanted time retained. And that was done to help them feel good about the opportunity, stick around. I think most of them probably did stick around. But that's -- you know, when someone leaves, sometimes you reappoint titles. And -- but our view is we didn't see anything significant in any way from any of them from an investment advice standpoint.

Q. Okay. So, again --

A. Sorry. Go ahead.

Q. -- do the Advisors contend that these six individuals who got the title changes, for

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those individuals their work didn't actually change, it was just their title?

A. Largely, yes.

Now, their work was -- their work was legal and compliance services, litigation support, and those were services that were paid for under the Shared Services Agreement.

Again, but I don't -- I don't have detailed knowledge. I haven't spoken to them regarding how their title changed. I wasn't prepared to really address what happened in their role. First time I saw this and was brought to my attention was the documents you sent last night. Wasn't on our radar at all because in our view their role did not change.

Q. Their role didn't change. Okay.

MS. WINOGRAD: Can we pull up Exhibit 35.

(Exhibit 35 marked for identification.)

BY MS. WINOGRAD:

Q. Okay. Have you seen this email before?

A. No.

Q. Okay. This is an email from Katie

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Irving to Dave Klos, James Mills, Will Duffy,
cc'ing Tim Cournoyer and JP Sevilla, right?

A. Yes.

Q. And it's dated March 3rd of 2020,
right?

A. Looks like it, yes.

Q. And it's just less than a week after
Trey departed the Debtor, right?

A. Yes.

Q. And it's just less than a week after
Katie, Tim, and JP took on new titles with
Highland, right?

A. I don't know that Katie or Tim. I
believe that was in your materials, but I'll take
your word for it if that's the case.

Q. Okay. Because I can show their title
changes if you want.

A. I'll take your word for it.

Q. Okay. And the subject of this email
is "Draft TerreStar Valuation," right?

A. Yes.

Q. What's the purpose of this email?

A. I have no idea. Houlihan Lokey
helped provide third-party support. Seems like a

NORRIS

logical service here, something related to valuation, which we were paying Highland for under our Shared Services Agreement.

But I -- "any info you have on TerreStar opinions or its valuation." Looks like a very simple email requesting information regarding valuation.

Q. Okay. Is this a type of valuation analysis Trey would have been involved in when he worked at Highland?

A. I don't know. But Highland was performing valuation services of which part was Trey sat on the valuation committee and we were paying them for valuation services of which included the performance of various employees related to valuation.

Q. So it's fair to say he would have probably been cc'd on this email or otherwise included in some way?

A. I don't know. My guess is -- I can't speculate on that.

Q. Okay. But he was involved in TerreStar valuation analyses while he was working at the Debtor?

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A. I'm not -- again, I don't -- I don't know the specifics of his involvement in the valuation process of TerreStar. I know he was involved with TerreStar from an investment perspective. He sat on the valuation committee. But I don't know particularly any specifics.

Q. Do you know if Katie had any involvement with TerreStar prior to Trey's departure?

A. I don't know.

Q. Do you know if -- do you know if Tim did?

A. I don't know. And I don't even recollect having any discussion with Tim after this on TerreStar in any way.

Q. Okay. So do you know if JP did?

A. Prior?

Q. Prior to his title change?

A. I'm not sure.

Q. Okay.

A. He may have. I think he may have, but I'm not sure. And I would say the legal team regularly provided support to investment professionals on agreement review, on

NORRIS

structuring. So it would be very realistic to think that JP and Tim had some involvement on TerreStar prior to that.

Q. Right. But this is more focused on investment advisory topics, right? This is --

A. I don't think so -- I'm sorry, go ahead.

Q. No, I was just going to say this is more about valuations rather than legal advice, right?

A. Yeah, but valuation is not investment advice. That's covered under back and middle office-type services which were provided under the Shared Services Agreement. It mentions valuation services in the Agreement. That's front and center of what shared services is, which that was across many different teams. The legal team had a lot to play on any given month related to valuation. In fact, legal and compliance, I believe, ran the valuation committee with Thomas Surgent and Jason Post, like, they were integral into the valuation process.

Q. Okay. So Katie and Tim and JP, are

NORRIS

you saying they would have been involved in this type of email before Trey left?

A. I don't know.

Q. Do you know if these individuals on this email continued to provide services for TerreStar in April?

A. In April?

Q. Of 2020. So like the following month?

A. I don't know. My only personal knowledge was Katie was involved in the beginning, and I haven't heard anything else from Katie on TerreStar. It's been JP. So I haven't actually heard from Katie in a very long time. I don't even know if she's still employed by Skyview or Highland.

Q. Okay.

A. I don't know.

MS. WINOGRAD: Can we show Exhibit 41.

(Exhibit 41 marked for identification.)

MS. CANTY: Give me just one second.

BY MS. WINOGRAD:

Q. Okay. Do you see the document?

NORRIS

A. Yes.

Q. Okay. So this is an email from Katie Irving on April 6th of 2020, right?

A. Yes.

Q. Okay. So she says, "Good afternoon, this looks fine. Approved. Thank you."

What exactly is she approving?

A. I don't know. First time I've seen the email.

Q. Okay. So it says "3/31 TerreStar analysis." Do you have any idea what this could be referring to?

A. Let me read here. "Tim/JP/Katie, Please find the draft 3/31 TerreStar valuation attached. The equity mark movement was driven by: Updated financials, debt balance increased 2.1 million; updated transaction weightings, due to the passage of time."

"The debt mark decreased slightly due to 0.25 percent."

"See page 16 for the enterprise value conclusion."

"Term Loan."

"Please let us know if you have

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comments. As a reminder, we'll need a simple approval from you before incorporating these marks in the NAVs for the retail funds."

"Simple approval" is what this looks like, of -- in order to incorporate into the NAVs, based on the email.

But, again, I'm not on the email. I've never been -- it's been many, many years since I was involved in the valuation process, but standard valuation-related work.

Q. Okay. Do you know if Trey ever approved valuations like this?

A. I'm not sure.

Q. Okay. So for the work that Katie and JP and Tim and the total of six employees we discussed, they were working on TerreStar issues after Trey left, right? Whether we want to call those investment advisory or not, right?

A. I mean, issues, I see this -- all you've shown me so far is an mail saying, can you provide me valuation data and then looks fine, approved. If that's -- and it's just Katie. I don't have any -- there is no evidence who provided things. The others are working on it.

1 NORRIS

2 So I don't know.

3 Q. Tim and JP were cc'd on all these
4 emails. You already said JP was involved in
5 TerreStar issues. So it's fair to say there were
6 people working on TerreStar after Trey left,
7 right, on some level?

8 A. Yeah. And, again, here we've got
9 value -- very valuation-specific items.
10 And -- but your comment was a team of five, and
11 here is two. I know JP. Katie had a couple of
12 emails.

13 Q. Okay. So do --

14 A. I have no evidence to support -- or
15 unless you have it, pull it up on Tim's
16 involvement.

17 Q. Okay. Well, Tim was cc'd on these
18 emails. Do you see his name? It says to Tim on
19 April 6?

20 A. Yeah, I -- just, I mean, I get sent
21 emails and cc'd on emails all the time, and
22 doesn't mean that I did work on it.

23 Q. Okay. So is it the Advisors'
24 contention that whatever work Tim and JP and
25 Katie did on TerreStar, the Advisors shouldn't

NORRIS

have to pay for it under the PRAs?

A. I think we would have to understand -- I mean, this is the first time we even saw this last night, the document. It's not something we had discussed or prepared for in detail. I don't know if it's part of the topics that -- I don't know the level of work they put into it. So I don't know what they were doing. I don't have background. There's no -- other than a couple of emails you showed me. I have no personal experience, and I don't have any other based on my preparation.

MS. WINOGRAD: Okay. I think that I want to take a little break right now before we move on. So let's just plan on coming back at 3:10, if that works for everybody.

THE WITNESS: Yeah.

(A break was taken from 1:58 p.m. to 2:18 p.m.)

BY MS. WINOGRAD:

Q. So I may have misunderstood you, but you had talked about an analysis conducted by Frank Waterhouse and Dave Klos in 2020. I think it may have been December of 2020. Can you give

1 NORRIS

2 me the Bates number for that document?

3 THE WITNESS: Davor, I don't know
4 Bates numbers. Is that the ACL thing, or is that
5 something else?

6 MR. RUKAVINA: Ask again, please,
7 Ms. Winograd.

8 MS. WINOGRAD: Yeah, there was --

9 THE WITNESS: You provided it. All I
10 remember I sent him ACL-025012. Is that the
11 Bates? I don't know.

12 MR. RUKAVINA: It's one of them.
13 It's been produced in several different numbers,
14 but that's it.

15 BY MS. WINOGRAD:

16 Q. Okay.

17 A. We don't have the underlying support,
18 as I've mentioned several times here. And I
19 believe Mr. Morris said before you got back on
20 that he would get that to us by Monday.

21 MR. MORRIS: Yeah, I promise to get
22 that to you.

23 Can you just read it again, slowly,
24 Mr. Norris, so I can tie it together?

25 THE WITNESS: Yeah. ACL025012.

1 NORRIS

2 MR. RUKAVINA: Thanks so much.

3 A. I believe Mr. Rukavina also provided
4 file an actual file name, an Excel file name for
5 the underlying support.

6 BY MS. WINOGRAD:

7 Q. Okay.

8 A. Which we haven't received yet, but so
9 you can help in finding that.

10 Q. You had also mentioned that Dave Klos
11 said that a true-up couldn't be done in 2019
12 because of the bankruptcy, right?

13 A. So he told -- he told us that a
14 true-up was not done because of the automatic
15 stay. They were told, and they brought this to
16 the attention of DSI and Highland, Highland's
17 counsel and I believe Mr. Seery, because of the
18 automatic stay. That was what they pulled up.

19 Q. Is that in writing?

20 A. I don't believe it's in writing, but
21 myself and DC Sauter heard directly from him and
22 Mr. Waterhouse on that matter.

23 MS. WINOGRAD: Okay. Can we go to
24 Exhibit 13, please.

25 (Exhibit 13 marked for identification.)

1 NORRIS

2 BY MS. WINOGRAD:

3 Q. Okay. Are you familiar with this
4 document?

5 A. Yes, I believe I have it here. This
6 is just your response to our -- our claim; is
7 that right?

8 Q. This is the Advisors --

9 A. Oh, it's ours, yes. This is -- yes.
10 If you scroll up, it was filed on 12-22?

11 Q. Yes.

12 A. Yes.

13 MS. WINOGRAD: And so can we scroll
14 to page -- pdf page 3, please.

15 Actually, let's go to page 8. Okay.
16 Just go up a little bit. A little bit more.

17 BY MS. WINOGRAD:

18 Q. Okay. So do you see here it says --
19 let me ask it this way: The Advisors contend
20 that they -- that they paid under the agreement
21 due to a mistake of facts, right? Under the
22 Payroll Reimbursement Agreement due to a mistake
23 of facts, right?

24 A. We contend that we -- we didn't pay.
25 We were relying on Highland for those payments.

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Q. Right. But you're saying that -- the Advisors are saying that they paid because they were -- the Advisors contend that they overpaid under the PRAs for employees that were no longer at the Debtor, right?

A. Because we were relying on the Debtor to determine that, yes. I'm sorry, maybe ask your question one more time.

Q. Okay. So do the Advisors contend -- don't the Advisors contend that they overpaid under the Payroll Reimbursement Agreements because they were paying for employees who were no longer at the Debtor?

A. I believe that's a part of it. I think this is in our response. This talks specifically about the voluntary payment rule in our stand here, but that's a part of it, that we overpaid for --

Q. But with regard to the overpayments for the Payroll Reimbursement Agreements, the core of the Advisors' claim is that they overpaid because they were paying for employees who were no longer employed at the Debtor, right?

A. The core issue is we were relying on

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Highland to make the payments, and we were relying on Highland to prepare the calculations appropriately and to seek reimbursement for employees that provided actual services and were dual employees. So, yes, we were paying. And you'll see in our calculation there's -- and based on the schedule we discussed, we were paying for employees that were no longer employed.

Q. Okay. So let's go to paragraph 21 quickly. It says, "Here, the Advisors were not aware of all of the facts until late November 2020." Do you see that?

A. I do.

Q. Okay. So are the facts that the Advisors were not aware of that certain employees were not employed at the Debtor?

A. No. And I've answered that multiple times for you. We were aware that they were no longer employed. We just weren't aware that Highland had been paying the same amount for those employees that are no longer here, or no longer employed.

Q. Okay. Prior to the termination of

NORRIS

the Payroll Reimbursement Agreements, were the Advisors ever in breach of their obligations to the retail funds?

A. The Advisors meaning us in breach of our duties to the retail funds?

Q. Uh-huh.

A. No.

Q. Okay. Did the Advisors ever tell the retail board that Highland was in breach of any of its obligations under the Payroll Reimbursement Agreements?

A. Once we found out, we let the board know that we were paying for employees that were no longer employed, or they have been continuing to charge the same amount that they had been charging pre-bankruptcy even though they were no longer employed.

Q. Okay. Who at the Advisors told them?

A. Who would we have told?

Q. No, who at the Advisors told the retail board?

A. It would have been DC Sauter or myself. In -- we had, as I mentioned, a number of board meetings throughout this time period.

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Q. So when did the Advisors tell the retail board that Highland was in breach?

A. It would have been sometime -- DC and myself found out in late November/early December when we found out they continued to pay these amounts, and there would have been multiple conversations thereafter we had board meetings in December. We had multiple board meetings in January, had multiple board meetings in February, and it was a topic of conversation.

Q. So did the Advisors tell the retail board, then, in December of 2020?

A. I don't remember specifically.

Q. Okay. But it was after -- it was December 1st -- it was after December 1st?

A. I don't remember the exact time period, but all of this happened, and once we knew -- it wasn't -- as soon as we find out -- we needed to find out the details, and we had been asking for specific details for quite a while. But I don't remember the exact time period or the exact date, but we had board meetings in December multiple board meetings in January, board meetings in February, and it was discussed

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multiple times with the board.

Q. Okay. Is there any document reflecting the Advisors telling the retail board this?

A. I don't know. I believe we provided all documents that are responsive. I don't know if there's -- we keep minutes of board meetings. I don't know if that was included.

Q. And I apologize if this covers something you already said, but just for my own clarity, what exactly did the Advisors tell the retail board?

A. Yeah, we told them -- we explained the key different -- the key agreements which is the Shared Services Agreement and the Payroll Reimbursement Agreement. They were very aware we had to hire Jason Post. In fact, that was at their urging, knowing that we were continuing to pay the same amount to Highland under the Shared Services Agreement. So that was a very clear communication. In addition, we had told them that we were paying for certain investment professionals under the Payroll Reimbursement Agreement for the schedules based on employees

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largely that no longer were employed. So that was communicated to the board.

Q. Okay. So the Advisors told the retail board about the -- about Highland's breach under the Payroll Reimbursement Agreements at the same time they told the retail board about the breach under the Shared Services Agreements?

A. And, again, breach, I don't know if you're using the right term there.

Q. Let me rephrase it. That Highland wasn't performing under the --

A. Again, our claim isn't that you weren't performing all services under the agreement, we were just being billed the wrong amount, right? So -- but the board was very aware of our concerns and they, themselves, had concerns about the services provided and expressed those. And that was a meaningful part of the conversation, so much, in fact, that they had concerns about allowing us to hire Skyview, who was hired -- created from the old Highland employees because they were concerned it was going to be the same people providing shared services, and they had concerns about the

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services that were provide before. So it was a two-way conversation and understanding with our board throughout this process.

Q. Okay. So -- and I want to get straight what the Advisors' claim is with the PRAs. The Advisors are contending not that Highland -- they are not contending that Highland didn't perform under the PRAs, they are -- right?

A. And I don't know if performing under an agreement sounds like a legal term. I don't know that I'm able to answer or make that determination, but it's very simple. We overpaid. We are to reimburse for actual employees, and so our contention is we overpaid for the services provided. This was not a you provide the services you get paid regardless. It's we're reimbursing you for actual costs of those employees. And so they were charging us too much money, and we have provided a calculation of what we believe that is.

Q. Okay. But the Advisors contend that the services were being provided, right?

A. There were investments -- we are saying there's not investment advisory services

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of dual employees. And, in fact, this report we send shows there's still dual employees providing investment advisory services. So it was a use it, right, and pay. And so there was not a, okay, you're no longer providing these services. Same thing with shared services with the agreement HCMFA was paying a cost plus 5 percent, and it should just be the cost, not a stagnant amount based on pre-bankruptcy billings.

Q. Okay. Because I'm just trying to understand if the Advisors are saying that the investment advisory services were being performed by Highland but that the specific employees just weren't providing them and that that was why Highland breached under the PRAs.

A. The services changed dramatically, the amount of services provided, but that was fully functional under the agreement. You could provide this level of service, and we would pay this level plus 5 percent. Or you could provide this level of service, and we would provide this plus 5 percent.

And naturally the head count shrunk dramatically at Highland pre-bankruptcy and

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through the bankruptcy as people left, and there were investment advisory services that continued, and there were a number of them that did not. And that was -- our view is that was what the agreement contemplated. You pay for the reimbursement of or the services provided. And that continued -- the services continued, again, at a lower level, but we were overcharged and Highland paid for us too much.

Q. Okay. So are the Advisors contending that they overpaid for services that they weren't receiving under the PRAs, that they overpaid for employees that weren't working there under the PRAs, or both?

A. The PRAs -- the services provided are investment advisory services. Those -- the number of people and actions providing those was significantly reduced. The head count was significantly reduced. And we were paying based on the old rates. So it's -- the services provided is not services detailed in there other than dual employees, and there's not a requirement that they have to have a certain number of dual employees. We were overpaying

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because we were paying for employees that were no longer employed, and there was not a new person replacing that other -- that other responsibility.

Q. Okay. And are you -- are you aware in your individual capacity that in the fall of 2020, the retail board conducted an annual review of whether to renew its agreement with the Advisors?

A. Yes.

Q. Okay. And this is called the 15(c) review, right?

A. Yes.

Q. Okay. And you're aware that part of this involved an analysis of the quality of services that the Advisors are performing to the retail funds, right?

A. Yes.

Q. Okay. Did you participate in that annual review in your --

A. I did.

Q. -- individual capacity?

A. I did.

Q. What parts did you participate in?

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A. I participated in the board meetings where they were discussed, I gave business updates. My job is running the sales and distribution effort. So I provided updates on our sales successes. I was involved in the conversations throughout. We relied heavily on HCMLP's employees in regards to the services and the shared services, but I was involved in the conversations. Not all the conversations but the board meetings that were 15(c) we discussed.

Q. And so is it fair to say you're familiar with the board minutes from those meetings?

A. I would be familiar with what we discussed, but the board minutes, I don't know that I've read board minutes.

Q. Okay. So just going back to the meetings themselves and the fact that you were there, was there anything -- was there anything inaccurate that was said at those board meetings?

A. Inaccurate?

Q. Uh-huh.

A. Not that I know of.

Q. Okay. And are you familiar with the

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reports that the Advisors sent to the retail board in connection with the 15(c) review?

A. The memos, is that what you mean?

Q. Yes, the memos.

A. I'm generally familiar with them, yes.

Q. Okay. Are you aware of anything inaccurate in those memos?

A. I haven't read the memos, so -- and you are asking me in my personal capacity, I believe, so I'm not aware. Again, I haven't read them. I may have read portions of them, but I didn't read the whole memos.

MS. WINOGRAD: Okay. I might be close to finishing up, I just want to take -- let's take like a -- let's take like a three-minute break. Let's come back at 3:40. I just want to look through some documents.

THE WITNESS: Okay.

(A break was taken from 2:36 p.m. to 2:41 p.m.)

BY MS. WINOGRAD:

Q. Do you know if, as the 30(b)(6) witness, between the petition date and the date

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of the administrative claim, did the Advisors ever say any -- did the Advisors ever make any inaccurate statements to the retail board?

A. None that I know of that would have been intentional. And I say that "intentional" because also a point in time, it's important to note that particularly in this fall 2020 period, we mentioned the 15(c) process, we had -- it was more of an iterative process, and we were going through usually the board would approve things over two meetings because of everything going on with the Shared Services Agreement and the bankruptcy, it lasted longer. And also during this time period, the tenor of the entire relationship with Highland started to change. And so some statements that may have been given in September, October, may have changed dramatically by November once the services had changed, or once things had changed. So I don't think there was anything intentional.

I know that there was a question of some -- some documents that had been provided by Frank Waterhouse that were related to a note. And it mentioned -- it was -- in looking back at

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it, we looked at those, the numbers didn't make sense to the Advisors. And I don't remember all the particulars, but I think that came up in another case, and there was a contention that that wasn't completely accurate, but it wasn't an intentional item.

MS. WINOGRAD: Okay. So I'm going to move to strike that.

BY MS. WINOGRAD:

Q. Are you aware today as you sit here of any inaccurate statements that were made to the retail board between the petition date and the date of the admin claim filing?

A. In all instances we tried to be a hundred percent forthright with the board. The accuracy at the time of each submission was -- our view was things were accurate.

Q. So earlier when I asked you who you spoke to to prepare for today's deposition as a 30(b)(6) witness, you named a few people. And correct me if I'm wrong, but I heard -- I heard James Dondero, Collins, Vitiello, Mitts. And was it Fuller? I couldn't hear --

A. Yeah, Fullmer. Kevin Fullmer.

NORRIS

Q. Okay. And am I missing anybody that you said you spoke to?

A. DC Sauter, my outside counsel. I got some numbers from Hayley Eliason, who is in accounting. I think that's everyone.

Q. Okay. And you said that you reviewed a number of documents, right?

A. I did.

Q. Okay. So based on the people that you spoke to, the people that you just named, and all of the documents reviewed, you answered my questions today with all of the facts that you had knowledge of, right?

A. Yes.

Q. You answered my questions to the best of your knowledge today, right?

A. I did.

Q. Okay.

A. And I think I said it I don't know how many times, but, you know, we unfortunately did not have access to Mr. Waterhouse, and that would have been helpful. At his attorney's suggestion and requirement, we couldn't prep or use him or talk to him in this. And then

NORRIS

obviously we couldn't talk to Mr. Klos. And they'll both be deposed, and we'll find more additional information.

Q. Okay. So we're finishing up here, and the last thing I want to ask you is: Is there any answer that you gave me today that you want to supplement or amend?

A. I don't think so. I probably talked more than you wanted me to. I think that -- I think that covers the items.

MS. WINOGRAD: Okay. Well, that's all I have. So thank you very much, Mr. Norris. And I'm going to let John Morris now take this over. So I will say goodbye. Thank you again.

THE WITNESS: Thank you.

EXAMINATION

BY MR. MORRIS:

Q. Hi, Mr. Norris.

A. Hello.

Q. So I just want to cover the singular topic of damages.

A. Yes.

Q. Are you aware that damages was one of the topics on the 30(b)(6) notice?

NORRIS

A. Yes.

Q. And are you prepared to share with me all information that you have that relates to that topic?

A. I am.

Q. Okay. The Advisors' administrative claim is based on its contention that Highland has breached two different Shared Services Agreements and two different Payroll Reimbursement Agreements; do I have that right?

MR. RUKAVINA: Objection. Form.

A. Yeah, again, the language I talked about earlier is breached. I, again, believe that the issue at hand is that we've been paying for services or overpaying for services that we never received and that Highland, who we had outsourced and relied on for payment of these, continued to pay at a higher rate. So that's the --

BY MR. MORRIS:

Q. So you are uncomfortable using the word "breach"? Do I have that right; you don't want to use that word?

A. Yeah, again, I'm not an attorney.

NORRIS

And as I look at this, there were services provided under the Shared Services Agreement and the intent, again, was to be -- particularly the HCMFA and then payroll reimbursement the cost-plus agreement, and the view here is there were services provided -- right -- and they performed under those agreements. A lot of good people working hard. It was just that we were billed at a prepetition rate for services that were postpetition and employees that were no longer there.

Q. Let's take them one at a time.

Are you -- do you have an understanding of HCMFA's claims under the Shared Services Agreement?

A. I do.

Q. Okay. Does HCMFA claim that Highland breached its obligations under the Shared Services Agreement?

A. I have the same answer I just provided on breach.

Q. Can you just answer my question. Does HCMFA contend that Highland breached any obligation under the Shared Services Agreement?

NORRIS

A. Well, particularly if you look at the responsibility to handle accounting and payroll, we relied on them for those calculations, and particularly related to this agreement, there was overbilling and overpayments. But whether you call that a breach or not, that's what we contend.

Q. Okay. Are there any other breaches that HCMFA contends Highland did with respect to the Shared Services Agreement?

A. No. Again, I would point out that discovery is still ongoing. We haven't talked to Mr. Waterhouse. But as we sit here today, it's very simple, straightforward. We paid for services we didn't receive.

Q. Okay.

A. And we were overbilled, we overpaid for whatever reason. Those are the damages.

Q. Okay. I just want to make sure that we're on the same page here. I'm only talking about HCMFA, and I'm only talking about the Shared Services Agreement. Do you understand that?

A. I do.

NORRIS

Q. Okay. How much do the -- does HCMFA contend it is entitled to recover from Highland under the Shared Services Agreement?

A. Yeah, so under the Shared Services Agreement, in going into this, there is two aspects of this. One is the calculation. That is the payroll reimbursement. We had to hire additional employees to compensate for reduction in services from Highland. And so that's the damages. There was a hire of Rob Harris, an outside attorney who came in, and hiring of Jason Post. Jason Post split his duties between HCMFA and NexPoint Advisors.

In addition, those are the direct costs that we had to pay. The others are, as you will recall, you provided a calculation for Mr. Klos on the amount of Shared Services Agreement payments for overpayments. So there's a number on there that shows a \$1 million gain unrelated to the Shared Services Agreement, and that's the damages that we assert related to the Shared Services Agreement.

One million was an annual number, and so you take 16 months, which is the period, and

NORRIS

amounts to approximately 1.3 million. And that is split between HCMFA. It has it on its schedule, and I'll point you back to it. We haven't received the support yet which you said you would provide by Monday, and the amount listed for a point in time, the annual profitability at that time was 0.4 million for NexPoint Advisors and HCMFA \$600,000. So if we're just talking HCMFA, it's \$600,000.

The additional employees is \$425,000 between Rob and Jason Post. And we can talk about allocations, but an even split between the two entities is a logical split.

Q. I'm sorry, I'm going to try this a little bit different.

Can you give me the total number, and then we'll break it down? What is the total amount that HCMFA claims it is due as a result of Highland's either breach or failure to perform under the Shared Services Agreement?

A. Yeah. So it is one -- HCMFA, I've got an aggregate number of 1.3 million, which is HCMFA \$600,000, based on Dave Klos' spreadsheet, which is an annual number, which is \$800,000. So

NORRIS

\$800,000 for overbilling of services that were not received, right, for overpaying. And then hiring of additional employees is \$212,000 for HCMFA and \$212,000 for NexPoint Advisors. And I apologize for the -- I have the overall number for both entities, 1.3 million plus 425,000, and that is split between the two entities.

Q. So the 1.3 million is total for both entities, right?

A. Sorry, the 1.3 is related to overpayment for the shared services, and 425,000 for the additional employees. And -- maybe that wasn't --

Q. So let me try again.

A. Yeah, yeah.

Q. You said it's 600,000 from the cost analysis for HCMFA?

A. Related to the shared services for one year, and it was 16 months, so it was 800,000.

Q. Okay. 800?

A. 800.

Q. And then how much -- is the same analysis done for NexPoint?

NORRIS

A. Yes. And that's \$500,000 for NexPoint.

Q. Okay. So -- and then you took the 425 for Harris and Post, and you split it between the two?

A. Correct.

Q. Okay. So that -- do I have this right, for HCMFA the total claim has two components, one of which is \$800,000. That comes from the Klos analysis. And the other is \$212,000, which is one-half of the total cost of Harris and Post for a total of \$1,012,000?

A. Yes.

Q. Perfect.

Does HCMFA rely on anything other than the cost analysis to support the \$800,000? Are there any other facts that you're aware of that support that number?

A. This -- obviously this is the best available information prepared by the Debtor employees at this time and, you know, they were the closest to the numbers. We don't have the backup for this, so we would love to see more. But we're going to be able to talk to Mr. Klos

NORRIS

and Mr. Waterhouse as well. We tried to receive -- you sent us invoices that we barely got with passwords protected. We got the passwords removed, that had invoice amounts and dollar amounts paid and tried to back into numbers. But ultimately don't have the level of info that Mr. Klos and Mr. Waterhouse do, and their analysis here I think is the best available information.

Q. Okay. So subject to any further information you may obtain, HCMFA's sole basis for the \$800,000 number is the cost analysis, correct?

A. That's -- that's one analysis. And also the analysis that we knew we were getting less service during this time period but paying the same dollar amount. So we were paying -- we did additional digging in those invoices you provided, and in some of those months we were paying for employees that we know were not providing us any services. So HCMFA is at cost plus 5 percent and the response and discussion we had with Mr. Klos was, well, we just continued to charge the same amount. So it matches up with

NORRIS

our understanding and our research that we were being overbilled, and Dave Klos already came up with the calculation. So it's our understanding of the situation combined with his analysis.

Q. Okay. And did HCMFA ever make any attempt to quantify the dollar value of the loss of services that it sustained?

A. Yeah. And we did an analysis. We actually -- and I mentioned this earlier, but we included -- we had to incur additional legal bills. We had to incur additional time of Mr. Sauter who was spending significant amounts of time that otherwise would have been litigation support and legal services, and we did quantify that. However, we chose at this time to exclude those. So we're not seeking the additional damages or costs that we incurred in K&L Gates and Davor's firm and D.C.'s time to maintain attorney-client privilege.

Q. So the \$800,000 piece from Mr. Klos, is that \$50,000 a month?

A. In his calculation he has \$600,000 divided by 12, \$50,000 a month.

Q. Okay. And do you understand what the

NORRIS

basis for that \$50,000 monthly figure is?

A. No. We're waiting on the backup from -- from you, from Mr. Klos. Now, I can speculate because we have other invoices that we got from you that show we were paying, for example, for compliance and legal services that we know were not performed. We were paying for bonuses for insiders that were not giving bonuses. We were paying for a number of things -- and we can speculate. Again, that's all speculation.

Q. I'm going to be rude and interrupt and say -- I think Mr. Rukavina will join me in saying we don't want you to speculate.

MR. MORRIS: So I'm going to move to strike and just ask the question again very simply.

BY MR. MORRIS:

Q. Does HCMFA know the basis today of the \$50,000 monthly figure that Mr. Klos arrived at?

A. No.

Q. Thank you.

Is it -- is it HCMFA's contention

NORRIS

that the diminished services from Highland were equal from the petition date until the end of 2020? Was it constant over that period of time?

A. No, it -- it -- as I had discussed earlier in the deposition, things changed over time, right? And the quality of service changed over time. The number of employees serving us was reduced over time. So it was over time reduction and quality of services -- or not quality but the actual services provided were reduced.

Q. And, in fact, for the first few months of the bankruptcy, Mr. Dondero retained control of both the Advisors and Highland, correct?

A. I'm not sure what the first few months was from a legal perspective. I wasn't involved in November and December, January prior to Jim completely ceding control. So I don't know what the mechanism was.

Q. I think the pleading says that the diminishment of services began with Mr. Seery's directive in July of 2020. Do I have that right?

A. I'd have to -- you have to pull it

NORRIS

up. I don't know that that was the beginning, but that was -- there were certain things that very specifically were diminished at that point.

Q. Okay. Did the -- does HCMFA contend that Highland failed to provide any services prior to July of 2020?

A. There were certainly services that were not provided at the same level as pre-bankruptcy. And, you know, that's -- that's very clear. The level of service dropped off. But, again, the HCMFA agreement is a cost plus 5 percent. There was a lot of things we had to do, even before July, that required additional work on our end and we filled it. Right?

And we were all working towards a peaceful resolution. I believe everyone thought there was going to be an amicable resolution, even Mr. Seery, and so everyone did their best effort, but it was -- but there were some things that were not provided.

There were people that I interacted with that I never saw. Highland wasn't coming in to the office. We were. I know there was COVID-related items, but the level of interaction

NORRIS

and service dropped off.

Q. When did the drop-off begin?

A. When you filed for bankruptcy.

Q. Okay. Can you tell me how the filing for bankruptcy, what specific services that Highland failed to provide on the day it filed for bankruptcy?

A. Again, service -- services provided is we're paying for the services that are provided. Right? It's a cost plus 5 percent here. So go through the chain, everything became harder after the bankruptcy filing. You had, for example, PR, legal, litigation support. Those people were all wrapped up in all the other stuff, and so they were providing less of a service for what we were doing.

It was -- you had the same number of people -- actually you had far less, because people started to quit, and there weren't large hires to replace that. So just naturally there was a -- across all of the services, a diminished impact.

Q. So it's HCMFA's contention that the moment Highland started -- filed for bankruptcy

NORRIS

that -- withdrawn.

Based on the information you have today, it's HCMFA's contention that from the moment Highland filed for bankruptcy it ceased to provide services on a monthly basis that were valued at \$50,000, and that monthly valuation of loss of services continued until the end of December 2020. Do I have that right?

A. Again, we're taking Dave Klos's calculations. We need to see the backup, because we don't have an insight into your actual services you billed us for, which is a key component. What were you actually providing and what were we paying.

We were paying for a prepetition amount for actual services plus 5 percent, yet they continued to bill us for the work that was done thereafter.

And, again, this is not getting too complex. Here is Mr. Klos's analysis showing -- related to both entities' overall gain. And there is other things in there that we could argue, but that's -- that's the simple analysis.

Q. Okay. I'm just asking you as the

NORRIS

30(b)(6) witness charged with the responsibility of answering questions about damages, what HCMFA's position is. Do you understand that?

A. I do.

Q. Okay. When did HCMFA first learn that Highland was providing less service?

A. As I mentioned, it was ongoing throughout. It was -- we knew it was happening, but all the way up through that point, from day one on, the goal was to have a quick resolution in this. You were even working for Mr. Dondero, right? He hired you.

And then things changed. Right? There was a gradual iterative process. And even until late 2020 we continued to work. Everyone worked hard. We tried to resolve things. We took on more as the Advisors. The goal and vision was that things would be wrapped up amicably.

Q. Okay. You know Frank Waterhouse. You've mentioned him quite a few times today, correct?

A. I do know Frank, yes, and I have mentioned him a quite a few times.

NORRIS

Q. You know that during the relative time period prior to the filing of the administrative claim, Frank Waterhouse was Highland's CFO, correct?

A. Prior to the filing of what, sorry?

Q. The administrative claim in January of 2020.

A. Yes.

Q. I apologize. Let me withdraw that.

You understand that Mr. Waterhouse was Highland's CFO from the petition date through at least the date that the Advisors filed their administrative claim in January 2021, correct?

A. I believe that's the case.

Q. Okay. Do you have any reason to believe that Mr. Waterhouse didn't have full access to Highland's accounting system?

A. We had access to Highland's accounting system.

Q. And he also had access to Highland's books and records, correct?

A. He did.

Q. And he also served as the Advisors' treasurer during the same period of time,

NORRIS

correct?

A. I believe that's the case, yes.

Q. And he was an officer of the -- of the Advisors during the same period of time, correct?

A. An officer of the Advisors, is that what you said?

Q. Yes.

A. That was -- you said treasurer, I believe, that's the --

Q. First I asked about treasurer and then I'm asking about his status as an officer. So let me just ask the questions again.

You are aware that from the petition date until the date the Advisors filed their administrative claim, that Mr. Waterhouse served as the treasurer of the Advisors, correct?

A. I believe that's the case, yeah.

Q. And during the same period of time he was an officer of the Advisors, correct?

A. Yeah, I believe the treasurer is an officer role.

Q. Okay. Was Mr. Waterhouse the person charged with the responsibility of authorizing

NORRIS

payments to be made on behalf of the Advisors?

A. Either Mr. Waterhouse or Mr. Klos.

Q. And you understand -- I'm sorry.

A. Go ahead.

Q. You understand that Mr. Klos reported at all times to Mr. Waterhouse, correct?

A. I believe that's the case. And if you tell me, then I'll believe that.

Q. Do you have any reason to believe that Mr. Klos ever did anything without the knowledge of Mr. Waterhouse, at least with respect to the payments that were made under the Shared Services Agreement and the Payroll Reimbursement Agreements?

A. I don't know. And, again, we haven't been able to depose both of them. But I know both of them knew of the overpayment. Both of them had raised the issue to DSI and to Highland and to counsel. And even the support that you provided us shows that they had an email in this calculation that was just a roll-forward of the analysis that had been done previously for DSI.

So they knew. They told us that they had -- couldn't do anything about it or were told

NORRIS

by Highland's counsel there was nothing they could do about it, and so they were in a tough position. Right? Frank and Dave were in a tough position, being stuck between both Advisors and having threats of their personal liability and firing, if they did anything to harm the economic interest of Highland.

So I see where you're coming from, but that's -- that's our view is they knew about it, they worked together, they raised the issue on multiple occasions, but we don't have all those details, other than what they told us in December of 2020.

Q. Did they raise the issue at any time before December 2020?

A. To me and -- and, again, it was around the end of November, beginning of 2020, I don't know if they raised the issue to me personally or to -- or they didn't to me or DC. We know they raised it -- you're saying to the Advisors or to Highland?

Q. To the Advisors.

A. Not that I'm aware of. Right? The first time we had heard about it was around that

NORRIS

timeframe, and we were shocked, including Mr. Dondero. Right? This is an important time period, and myself and DC when we found out.

Q. That's because -- that's because Highland had just -- all of this came to light after Highland gave notice of termination of the Shared Services Agreement on November 30th, correct?

A. I don't think so. I think that it had started earlier. And we actually sent, I think, a letter to your firm in October where we suspected we were overpaying, and we asked for the invoices.

And so DC and myself started to get involved in October, November, December because there were certain employees that couldn't be providing those services due to, you know, as we talked about earlier in the deposition, all of the things that were going on.

And so we started to understand a little bit more. We found out, we thought, on certain aspects of it, but it was that October, November, December timeframe.

Q. You mentioned that part of HCMFA's

NORRIS

damages are half the cost of Harris and Post; do I have that right?

A. That's correct.

Q. Okay. Over what period of time does HCMFA contend Highland should have to reimburse it for for their services?

A. Yeah, so the period of time is from the time period which Jason Post moved over until the termination of the agreement, not the termination notice, but the actual termination of the agreements, and then from the time period that Mr. Harris was hired, which was in October, until the end of the Shared Services Agreement. He was hired specifically to fill the avoid of the legal services that had been provided previously. And Mr. Post was moved over, yet we continued to pay for his services.

Q. Do you know what Mr. Post's salary is? Withdrawn.

Is that \$425,000 number based on anything other than their salary, their W-2 salary?

A. It's salaries, bonuses and benefits received during that time period.

1 NORRIS

2 Q. And how much salary, bonus and
3 benefits did Mr. Post receive during that time
4 period?

5 A. I don't have the breakout. I got
6 this -- I got the total numbers from -- from
7 Brian Collins. So I just have the total number.

8 Q. Do you know if any documents have
9 been produced in discovery that would support
10 your contention as to the cost of those two
11 employees?

12 MR. RUKAVINA: If you have knowledge,
13 John. If you would like them, we'll produce them
14 in confidence.

15 MR. MORRIS: I'm happy to take them
16 in confidence. But, yes, I would like any
17 document that the Advisors contend supports their
18 damage theory.

19 MR. RUKAVINA: We'll get that to you
20 ASAP. Just because it's personal, I just --

21 MR. MORRIS: No problem.

22 BY MR. MORRIS:

23 Q. Okay. Is there any difference in the
24 analysis under the NexPoint shared services
25 damage calculation than what we just talked about

NORRIS

for HCMFA, other than the fact that I guess the monthly number is a little bit less.

A. It's the same.

Q. It's otherwise the same theory, do I have that right?

A. Yes.

Q. Okay. So it's half the cost of Harris and Post's salary benefits and bonuses from the period they were hired until the termination date; is that right?

A. That's correct.

Q. And then you took the annual cost under the Shared Services Agreement -- actually, you know, I'm going to ask another question, go back to that \$800,000 question.

I understand that it's \$500,000 a month, but what portion of the annual payments under the Shared Services Agreement does the \$800,000 represent?

A. If you look at Dave's analysis, it was during the time period he looked at, current charges of 3.6 million, shared services costs, 3 million, so the 600,000 for the year divided by 3.6 is approximately 16.66 percent, I believe.

NORRIS

600 divided by --

Q. Okay. So, again, you're just relying on Mr. Klos's analysis at this time?

A. That's correct. It was prepared by the Debtor as an estimate of overpayments.

Q. Did you talk to Mr. Klos about that analysis?

A. So he told me it existed. Mr. Waterhouse as well. But I asked for a copy of it, he said he would have to check and didn't believe that they would allow -- you, Highland, would allow him to provide it. And that was the case, you wouldn't allow him to provide it.

So we talked to him and Frank about the overpayments that occurred in the analysis, but we didn't actually get a copy of it until discovery.

Q. And Mr. -- after Mr. Waterhouse left Highland but before his lawyer, I guess, intervened and said you're not allowed to speak with him, did anybody from the Advisors ask him about that analysis?

A. After he left?

Q. Uh-huh.

1 NORRIS

2 A. I don't remember -- no, he left at
3 the end of February, right?

4 Q. Right.

5 A. Yeah, I don't -- we had talked to
6 him, I don't know the time period, but we had
7 talked to him about this in that period of
8 December/January/November, same time as Dave
9 Klos. I don't know that there was discussion
10 with him. There may have been, but I don't know.

11 Q. Did Dave or Frank tell you or anybody
12 at the Advisors, prior to the filing of the
13 administrative claim, what the overpayment number
14 was?

15 A. Yeah, there was discussion. Dave
16 wouldn't give specifics except that it was large,
17 you know, close to -- I believe there were
18 estimates. And I believe Frank had said
19 something like \$14 million, which amounted to --
20 which was a source of what we included in our
21 admin claim. We included 14 million originally.

22 So it was all verbal. And so what we
23 -- we were working off the best available
24 information, and they -- they were in a tough
25 spot, too. They couldn't provide the

NORRIS

information. They couldn't give us the detailed calculation. I think they gave us rough ballpark.

MR. MORRIS: La Asia, can you pull up Exhibit 26, please.

(Exhibit 26 marked for identification.)

MS. CANTY: Sure, give me one second. Let me see if I have it.

BY MR. MORRIS:

Q. So do you see you wrote an email on December 1st, 2020?

A. Yeah.

Q. And do you remember writing this email?

A. I do.

Q. And this is at 8:53 in the morning, after Highland has given notice the prior day of termination of the Shared Services Agreement.

Do you remember that?

A. I actually had not received the shared services termination at that time. And I don't know -- I do recall I didn't hear about it until later, and I wasn't copied on the original notice.

NORRIS

Q. It couldn't have been too much later because you refer to the termination notices in your December 1st email at 8:53 a.m., right?

A. Oh, I must have, yeah, you're right.

Q. What's --

A. When was the date of the termination notices?

Q. I'll represent to you that it was November 30th.

A. Perfect. Yeah. So evidently I don't remember as many details about writing this email. I have to look back at this.

Q. Okay. So before 9:00 o'clock on the morning after the termination notice is sent -- how come -- how come you're doing this analysis that morning, do you remember?

A. Well, even prior to this, D.C. and I were trying to understand the separation -- the separation of all the agreements. At this time now Highland was moving towards a liquidation. We were now going to be responsible for our own services. And so I was trying to understand -- this is when I first got a glimpse into these numbers, was trying to understand what we were

NORRIS

paying and for what. And you can clearly tell from this and his responses we didn't know exactly the amounts that were being paid for what specifically. And that's what we were trying to do.

Q. Okay. Do you see that your total is \$14 million?

A. I do, yeah.

Q. That's the number that you came up with, right?

A. No, this is actually taken directly from materials, the trailing 12 months ended 6-30. This is the actual services. This isn't an overpayment calculation. This is an actual services provided. And I believe I stripped this from materials that Mr. Klos had provided to our board.

Q. Do you know what materials those are?

A. If it's related to income statement items, which I believe this is, he provides an annual as part of the 15(c) process expenditures that are paid. I think that may have been the source of it, but I'm not sure. These were items I stripped from materials that Mr. Klos had

NORRIS

already prepared or Mr. Waterhouse or their accounting team.

Q. And they are numbers that come off the income statement, correct, your understanding?

A. I believe so. Yeah. And you have an expense line item, right? That would be from the income statement.

Q. And would the -- would the Advisors' books and records reflect amounts paid to Highland under the Shared Services Agreement and Payroll Reimbursement Agreement?

A. Would the Advis- -- sorry, can you repeat that?

Q. Would the Advisors' books and records reflect all payments made to Highland under the Payroll Reimbursement Agreement and the Shared Services Agreements?

A. They should, right? You have just the cash -- cash going out and an expense line item, and what we've said all along here is we were relying on Highland to outsource the accounting and the books and records, including payments to them, and they were booking them as

NORRIS

they came through.

Q. Okay. So -- so would the payments -- do you understand whether the payments made by the Advisors to Highland would be reflected in the general ledger of the Advisors as payable on the accounts -- withdrawn. Let me ask a better question.

Do you understand that all payments made by the Advisors to Highland would be reflected on the Advisors' respective accounts payable ledger?

A. If they were approved, a payable is a liability and would be a payable on accounts payable ledger. An actual accounts paid or expenditures or cash outflows ledger, I mean, we're talking about specifics, but they would have been reporting what they were charging us and what they were billing us, which we contend is an overbilling for services actually provided. We're not intending --

Q. Let me interrupt.

MR. MORRIS: I'm going to move to strike and ask you to listen carefully to my question.

1 NORRIS

2 BY MR. MORRIS:

3 Q. Do you know whether payments made by
4 the Advisors are reflected in the Advisors'
5 respective accounts payable ledger?

6 A. I don't know. I've never seen the
7 accounts payable ledger. But Mr. Klos and
8 Mr. Waterhouse would have maintained that and
9 their team. So we would be able to find out.

10 Q. Do you know where in the Advisors'
11 books and records payments made by them to
12 Highland under the Shared Services Agreements and
13 the Payroll Reimbursement Agreements would be
14 reflected?

15 A. Do you want the debits and credits?
16 I'm a CPA, but I haven't actually done accounting
17 in a long time.

18 Q. I'm asking for your knowledge.

19 A. It's an income statement, right? I
20 mean, you have an expense line item and, you
21 know, and then you're also going to hit the
22 balance sheet because you have cash flowing out.
23 It's going to reduce the assets. Our assets were
24 reduced. And our claim here is our assets were
25 reduced far more than they should have been

NORRIS

because we were overpaying for services. And the expense line item would have been too high because we were paying for things that we shouldn't have.

Q. Do you know if the Advisors' income statements were distributed to its officers on any periodic basis, whether it's monthly or quarterly or semiannually?

A. I don't know.

Q. Did you in your capacity as the Executive Vice President of the Advisors ever review the Advisors' financial statements?

A. Not in the context of they sent them to me to review. Occasionally I would look at them on the 15(c) materials, which were usually published as of June 30th, because those meetings were in August and September. But that was more of a cursory review from, hey, I'm curious. It wasn't my responsibility to handle any of the accounting or the financials. I rarely even understood the financials from that perspective.

Q. Prior to the end of 2020, from the petition date until December 31st, 2020, do you know whether the Advisors had any monthly expense

NORRIS

greater than the expenses they were paying to Highland under the Shared Services Agreements and the Payroll Reimbursement Agreements?

A. Sorry, from what period?

Q. From the petition date until the end of December 2020.

A. I don't know. Again, I -- I don't know.

Q. Can you identify any service provider that the Advisors had during that period of time which either of the Advisors paid, you know, more than a hundred thousand dollars?

A. I wasn't involved in the financials. Again, we outsourced that. We relied on Highland and Frank and Dave and his team. So I'm not familiar with the actual financials and all the service providers involved, so I can't answer that.

Q. When you -- when you spoke with Mr. Dondero in preparation for your deposition today, did you ask him if he was aware of the amounts that the Advisors were paying to Highland under the Shared Services Agreement and the Payroll Reimbursement Agreements after the

NORRIS

petition date?

A. Of the specific dollar amounts?

Q. Just whether he was aware.

A. Yeah, we talked about -- I asked him if he was aware that we were paying for services we weren't receiving and that we were overpaying. And he said, no, up until the point when we discovered it, he did not know.

Q. Did you ask him if he knew of the services that weren't being provided?

A. We discussed more generally services that weren't being provided, particularly the employees that were no longer employed, some of the legal and compliance services, more generally. He didn't get into "do you know the specifics." But his understanding was there were services not being provided.

And he said -- this is what he said, he said, "Well, our understanding is we were in discussions and Mr. Seery had said that those items would be netted out."

We were working towards an amicable resolution and Mr. Seery had represented -- and this is coming from Mr. Dondero -- that those

NORRIS

items would be netted out.

And so there was discussions, I'm sure there was knowledge of certain overpayments, underpayments, but these items would have been resolved.

Q. Did you ask Mr. Dondero why the Advisors continued to pay full freight when they knew that they weren't getting full services?

A. We did not -- yeah, we discussed that. He did not know and I did not know and no one that we spoke to knew that we were paying, you call it full freight, I would say full freight plus some, because we weren't paying for the services received, we were paying for employees no longer there.

And that's the big part of it, the payroll reimbursement. We talked about the numbers related to Shared Services Agreement, but these payroll numbers which we provide in our analysis are pretty significant. And we -- and his view, too, is what were we paying Highland for if not to provide the actual accounting and payables and calculations correctly.

Q. Did he provide any explanation as to

NORRIS

why the Advisors have been unaware until October or November 2020 that they were overpaying?

A. Yeah. Yeah. Actually, he said to me, he said, "You don't have" -- "We don't have a separate accounting team." Right? "We don't have duplicate, we're not hiring someone else to come in and check, we're relying on Highland."

And up until that point we expected to be charged and billed the proper amount. So, yeah, we did discuss that and those are some of the things I've been representing today.

Q. Okay. Do you know if anybody on behalf of the Advisors had any conversation with Mr. Waterhouse between the moment that he left Highland and the moment that his lawyers said you can no longer speak to him about these issues of damages and amounts paid and due under these agreements?

A. I know there were discussions where he reiterated that a calculation was done and Dave Klos prepared it, but I don't know who or when. And I think even then he was reserved on what he could or couldn't provide, given the threats that had been provided to him that he

NORRIS

would be personally responsible for any economic damages.

Q. Okay. During your diligence in preparing for this deposition, did anybody tell you that Frank Waterhouse had provided any information about amounts paid or overpaid under these agreements between the time he left Highland and the time his lawyer said he could no longer speak with the Advisors?

A. No. And -- and he, from the beginning, you may remember there was limited amount we could access Mr. Waterhouse. And so all of our communication, I believe, is before the filing. And he didn't have access to his files. He left the firm. He didn't have emails. He didn't have the calculation from Mr. Klos. And so there's limited things that he could provide.

MR. MORRIS: I'm going to move to strike. And I'm going to ask you to listen carefully to my question.

BY MR. MORRIS:

Q. During your diligence did anybody tell you that Mr. Waterhouse said anything

1 NORRIS

2 between the period between leaving Highland and
3 the time his lawyer said he could no longer speak
4 with the Advisors concerning amounts paid or
5 overpaid under the four agreements?

6 A. No, not in my -- my diligence in
7 preparing.

8 Q. Thank you very much.

9 MR. RUKAVINA: John, when you find a
10 convenient time, I request a restroom break.

11 MR. MORRIS: I'll do it right now for
12 you, Mr. Davor.

13 (A break was taken from 3:29 p.m. to
14 3:41 p.m.)

15 BY MR. MORRIS:

16 Q. Mr. Norris, we're going to put up on
17 the screen the document that you were kind enough
18 to identify and I just want to ask you a few
19 questions about it. Is this the document you
20 were referring to?

21 A. Which one am I referring to?

22 Q. The analysis that was prepared by
23 Mr. Klos.

24 A. No, this is -- this is the analysis
25 that I prepared regarding --

1 NORRIS

2 Q. Oh, you're right. You know what, I
3 don't have that other one.

4 MR. MORRIS: Can we take this down
5 for the moment?

6 MS. CANTY: Do you want the other
7 one?

8 MS. WINOGRAD: I wanted the one with
9 that Bates number HCL-025012.

10 MS. CANTY: Okay. Give me one minute
11 to get it up.

12 MR. MORRIS: Okay.

13 (Discussion off the record.)

14 (Exhibit 56 marked for identification.)

15 BY MR. MORRIS:

16 Q. Okay. So is -- let's just -- let me
17 say for the record that we're -- we've put up on
18 the screen a document bearing Bates number
19 ACL-025012. Do you see that, sir?

20 A. I do, yes.

21 Q. And is it your understanding that
22 Dave Klos prepared this document?

23 A. My understanding based on the email
24 that went from Dave to Mr. Waterhouse. But,
25 again, I'm making assumptions that the file was

NORRIS

sent from Dave to Frank. And my understanding is Frank -- or Dave created this.

Q. Okay. Has -- your understanding is who prepared this?

A. Dave. However, that's just based on -- the discussions we had in December 2020, where he said he had prepared analysis. I don't know if this is it. I'm assuming this is it. It matches the description. So we'll have to figure out when Dave is deposed if he did in fact create this.

Q. Did anybody other than Mr. Waterhouse acting on behalf of the Advisors ever speak with Mr. Klos about this document?

A. Myself and DC Sauter. Not the individual line items, but Dave told us he had -- there had been an analysis done that showed significant overpayment.

Q. Okay. Tell me everything that Mr. Klos told you and Mr. Sauter about this document that you can recall.

A. Yeah, it was -- we were going through the numbers and it was very high level of there was an analysis done, he was very guarded because

NORRIS

he was afraid of what he could or could not tell us. And he told us there was an analysis done that showed the overpayments. And so we asked for that and it wasn't provided.

Q. Did he say anything else in this conversation?

A. The conversation was related to transition services. We were going through a host of other things on how can we transition agreements and a number of things. That was -- in regard to the overpayment, it was very general.

Q. Was this a telephone conversation or was it in person?

A. Pretty sure it was a telephone conversation, but -- pretty sure it was telephone.

Q. Do you remember when it took place?

A. It was early December. Early December.

Q. Did he tell you why he had prepared the analysis? Withdrawn.

Did he tell you that he personally prepared the analysis?

NORRIS

A. I don't remember. I don't remember him saying him personally, but -- my recollection isn't perfect on that. I don't recall.

Q. Do you recall if he told you who did prepare the analysis?

A. No.

And then I would note in discovery we see, though, that it is a roll-forward -- this is a roll-forward of the information prepared for DSI and SCI last fall, which I would assume is fall 2019. So there was obviously a calculation in '19 prepared for DSI and SCI, but we don't have an indication of who prepared that, but we will be able to ask Mr. Klos.

Q. Did Highland at any time ever ask the Advisors to extend the Shared Services Agreement for any purpose other than completing an orderly transition?

A. Did Highland ask to extend it? I'm not aware of the discussions that went on. They may have, but -- I don't know if that was something on the preparation. It's not something I prepared for in discussing the negotiation of termination of shared services.

NORRIS

Q. You were involved in the process of negotiating the transition of services, correct?

A. Correct.

Q. And during the conversations -- and that process began in the summer of 2020, right?

A. Summer of 2020?

Q. July, August, September.

A. The second half of 2020, yes. My involvement really started much later. And I would say up until later 2020, the plan was that a plan would actually work, that there would be a negotiated agreement. And then once we realized that really wasn't happening, we had to prepare for Plan B and then Plan C and Plan D. But that was late 2020, and my involvement started end of November, beginning of December, and really in earnest about mid-January.

Q. I'm going to ask you this question in your personal capacity.

In your personal capacity are you aware of any proposal by Highland to extend either of the Shared Services Agreements?

A. A proposal to extend them?

Q. Uh-huh.

NORRIS

A. Any proposal to extend them?

Q. Correct, other than for the purpose of completing the orderly transition, because there were a couple of extensions in January and February. I'm not talking about that.

A. Yeah. My understand of the extensions was to complete the transition. But there was a lot going on, and if you're asking in my personal, I don't have any other recollection or knowledge personally on that.

And, again, I wasn't involved in the shared services negotiation prior to -- really prior to receiving the notices. And then even directly thereafter it was just helping transition items in negotiations of the actual transition.

Q. Do you know why this document was prepared?

A. I don't.

Q. So Mr. Klos did not tell you during your conversation why this document was prepared, correct?

A. No. If I look at the emails that Klos attached it, it obviously wasn't the first

NORRIS

time, it was a roll-forward. So why was it first prepared in 2018 -- or, I'm sorry, 2019 with DSI and SCI, I have no idea other. And we'll find that out with Mr. Klos.

Q. But Mr. Klos -- your recollection is that Mr. Klos specifically told you that an analysis was done that showed overpayments; do I have that right?

A. Yes. It was the amount that had been profit were overpayments to Highland.

Q. Did he say "profits" or "overpayments," if you remember?

A. I don't remember.

Q. It could have been either one of those?

A. Well, profits would have resulted from the overpayment. So it could have been either of them. But, yeah, I don't remember from --

Q. Okay.

A. -- the individual discussions.

Q. Just a little patience with me, please. I'm asking you to put yourself back in time and to try to remember the conversation that

NORRIS

you had with Mr. Klos. What did he say?

A. We definitely talked about overpayments, that we were paying for employees that were not there. So that was part of it. And whether that created a profit.

He did say even by email -- there is communication by email that there was a profit. So I think it was both.

In the conversation we were talking about paying more than we owed. And in the email, it was written profit, right? He noted that there was a significant profit to Highland from those contracts. Which, again, is against the intent of the agreement, which was a reimbursement for actual costs.

MR. MORRIS: I'm going to move to strike the last portion of your answer and again just ask you respectfully to listen to my question. I'm just asking you about the conversation you had with Mr. Klos. I don't need commentary. I don't want the commentary.

BY MR. MORRIS:

Q. Other than the one conversation -- withdrawn.

NORRIS

Do you recall anything else about this particular conversation that you and Mr. Sauter had concerning this document?

A. No.

Q. Do you know whether anybody acting on behalf of the Advisors ever had any other communication with Mr. Klos concerning this document?

A. I know that DC continued to ask for it. I continued to ask for it. I asked for it in January from Mr. Klos. I asked for it from DSI, DC and myself and Fred Caruso, and in February maybe had a call with Pachulski on that we talked to Brad Sharp.

And at this point I'm not even certain what the analysis would include. But we knew it existed and I continued to request it. We requested it in a December 11th letter to your firm from our counsel. And it -- so it was -- it was requested many times, but there was not a lot of information given.

Q. Okay. Can you share with me your interpretation of this document? What do you think this document reflects?

NORRIS

A. Yeah. So as we read through this, you have at the top the actual allocations and shared services and investment support, which is payroll reimbursement, right? What is the front office support that's being provided --

Q. I apologize. I'm going to interrupt. Can you just be a little bit more specific like where on the document you're looking at?

A. Yeah, so at the top section, the summing number that sums the 3.3 million and 3.7 million.

Q. Yes. Thank you.

A. Yeah, so NPA allocation and HCMFA allocation. You've got an allocation of investment support and shared services. Just as the agreement state, they will allocate and charge us for actual cost, a cost at margin. This is what they're showing here. He breaks it out by line item. So legal and compliance, what is the actual allocation of cost .2 and .3, that's 200,000, 300,000.

So you take those same numbers down to the bottom and you say, okay, now -- he did basically a subtotal of front office, which is

NORRIS

also above incorporated in investment support.

And so the investment support group charge is

\$3 million. You can go and add up all the line

items for investment support and it equals three

dollars, or \$3 million for NPA allocation and

\$5 million for HCMFA allocation. So if you

recall we're paying for actual costs of these

services.

The investment support, this is the

charge, the 3 million and 5 million. We were

being charged 8 million a year and Highland was

receiving cash and utilizing that to pay their

operating expenses.

The investment support is what was

actually provided. And that adds up to a

profitable number, profitability, or overpayment

of 2.3 million for NexPoint and \$4.3 million for

HCMFA for a total of 6.6. You carry that down to

the next row. Unadjusted gain is \$6.6 million.

And --

Q. Hold on one second. So that 6.6 is

the 2.3 plus the 4.3?

A. 2.3 plus the 4.3, yeah.

Q. I'm going to stop you just for a

NORRIS

second and make sure I understand.

So above the line you have the annual payments due under the NPA -- this is -- this is the Payroll Reimbursement Agreement, right?

A. Correct.

Q. This has nothing to do with shared services, right?

A. It does --

Q. At the bottom.

A. Once again, on front office payroll reimbursement. Right?

Q. Okay. So the NPA Allocation column is Highland's attempt to allocation among the various services the payments that are due on an annual basis under the NexPoint Payroll Reimbursement Agreement, right? That's how you get to \$3.3 million?

A. 3.3 and 3.7 are the actual charges. So these were -- I'm assuming these are just stagnant numbers or -- the stagnant numbers -- no, no, sorry. You're right. The 3.3 and 3.7 are the actual allocations of those actual costs.

Q. Okay. Do you know why the current charges of \$3 million and \$5 million are

NORRIS

different?

A. Yes. Because there was a -- if you go back to the Payroll Reimbursement Agreement, the dollar amounts are based on the employee services from Appendix A. Those current charges, \$3 million, tie directly to the original amounts that were being charged, which was \$252,000 for NexPoint Advisors and \$416,000 for HCMFA as a reimbursement for employees that were providing, one, investment advisory services, and, two, were dual employees.

So those are different because the amount of services provided to each entity varied when the contract was created and they continued to roll forward the same exact billing and so you see a three and a five. That's why they differ.

Q. Okay. So is it your understanding that the difference between the current charge and the profitability is the value of the services actually provided? That's \$700,000 for each -- that's shown as investment support. That's the value of investment support that was provided and so that's reduced from the current charges to get the net profitability?

NORRIS

A. Yeah. And just as an independent analysis, you can look at the numbers that we used from Kristin using the actual payroll of the employees that were employed during that time period and it lines up pretty close.

Q. Okay. Okay.

Let's go to shared services and I may come back to this. Can we scroll up a little bit to make sure there's nothing below the line here?

So, shared services. Do you know what "Current Charges" represent?

A. The current charges are the amounts that are being invoiced. And my understanding is that's at a constant rate and wasn't adjusted for actual services provided, which is the next line down, shared services.

Q. And do you have any idea how those numbers are derived, the 2.6 million and the 3 million?

A. We would have to ask Mr. Klos, or maybe you're, you know, additional support you provide us will have that, but I'm making the broad assumption here that it is for actual services provided. And we would love to see the

NORRIS

support just to --

Q. Yeah, I do apologize, Mr. Norris.

It's my fault. Mr. Rukavina has asked me for it a couple of times. I've responded to a number of requests and that's just one that fell through the cracks and I take responsibility for that. Okay?

A. Yeah, no problem. I won't bring it up again.

Q. I don't mind you bringing it up, but I think you deserve an explanation.

And so then you get a net profitability, that 400,000 and that 600,000, and those are the numbers you extrapolated over the entire postpetition period; do I have that right?

A. Yes. The million is just taken from Klos's numbers.

Q. Yeah. Okay.

Do you know what's to the right outside the box, the supplemental column?

A. I don't.

Q. Do you have an understanding of what that is?

A. No, I don't. But I'm assuming -- I

1 NORRIS

2 can only make assumptions. Klos will know.

3 Q. Perhaps. I would assume that either
4 he or Waterhouse would.

5 And do you know what the last column
6 is: Total allocated costs less all entities?

7 A. It's the summation of the three
8 columns before, I believe: 7.5 plus 3.7 plus
9 3.3, I believe. Add those up, six, seven, plus
10 7.5. That adds up. So...

11 Q. Is it fair to say that the Advisors'
12 entire damage claim is the \$9.6 million at the
13 bottom of this page plus the \$425,000 for the two
14 employees that they were required to hire?

15 A. No. There's -- there's -- let's
16 point out the 9.6, there are two numbers in here
17 which aren't part of these agreements. One is an
18 offset that they have in there for Non-Debtor
19 Employees providing services to the Debtor. We
20 want to learn more about that. We aren't
21 including that number.

22 Our damage number is very simple.
23 One, you could take -- you have the shared
24 services number were taken directly from here,
25 and the payroll reimbursement would be a range

NORRIS

between our calculation and this, which actually are approximately the same, \$6.6 million. If you annualize -- that's an annual number. If you take it for the 16 months and use the proration for 16 months, it's \$8.8 million.

So 8.8 plus 1.3 million -- right -- gets you to -- nine point -- sorry. 8.8 plus 1.3 -- I'm -- 8.8 plus 1.3 gets you 10.1, plus the 425,000, that's approximately 10 and a half million between HCMFA and NPA.

If you go the -- using our calculation that I provided to you, our estimate of the payroll reimbursement amounts are not 6.6 times 16 months divided by 12 multiplied by 16 at 8.8, it's 7.6. And, you know, we can talk about why there may be a difference, but we need the backup. But 7.6 million plus the 1.3 plus the 425 gets you to approximately nine and a half million dollars.

So whether you use the payroll amounts from Dave Klos that gets you to approximately ten and a half million, you use our calculation without knowing full details, it could be even more when we understand the

NORRIS

difference, nine and a half to ten and a half million dollars.

Q. I just want to make sure there is no dispute about this. The Advisors didn't pay any amounts under any of the four agreements in December or January in December 2020, correct?

A. That's my understanding, that there was no payment in December or January.

Q. Okay. And payment was made in February because that was part of the negotiation for the extension of the termination notice, correct?

A. It was payment. We don't -- we don't admit or say that it was payment for shared services that were provided. We reserved all rights related to that.

And so, yeah, there was a payment made and we were really forced into it. There was no negotiation on moving that amount. It was take it or leave it, we're cutting you off or you pay it. So akin to extortion.

Q. Well, I mean, you're allowed to negotiate and decide what terms you're willing to accept; isn't that right? Do you have any

NORRIS

problem with that from a philosophical perspective?

A. Yeah, the options were to cut the services when we weren't expecting them to be cut and could have had had detrimental impact. You know, we could have handled it, but we did choose to pay the amounts that were requested, but we reserved all rights and continue to reserve those rights.

Q. Did the Advisors contend that Highland didn't give sufficient notice as required under the various agreements?

A. There was notice given. And then we were working towards a negotiated agreement with a peaceful transition and we were waiting on a term sheet -- I don't want to rehash it all, but I think there was a good faith effort. And then all of the sudden it was, "Pay it or we're cutting," right?

We all thought we were moving towards a peaceful resolution and we would get things done. And then things changed and there was a demand for payment or we're cutting you off. And so, yeah, there was -- under the agreements you

NORRIS

provided the notice, but things, as they progressed near the end of that changed.

Q. And you actually got to a complete agreement that was acceptable to everybody, every single term, except the Debtor refused to lest Mr. Dondero back in the offices. That was the only issue that stood between the parties, correct?

A. If I recall correctly, yes. We negotiated hundreds of points. We all worked really hard. And the Debtor would not allow Mr. Dondero to be in the office that we would be leasing and perform his duties as the president of the company. So that was -- that was the sticking point for both sides. The Debtor didn't allow it and Mr. Dondero required it and there was no agreement.

Q. Let's -- let's see if we can finish up.

MR. MORRIS: Can we put that other document back up on the screen, please? La Asia, I think it was Exhibit 51.

(Discussion off the record.)

(Exhibit 51 marked for identification.)

1 NORRIS

2 BY MR. MORRIS:

3 Q. Mr. Norris, is this the Advisors'
4 damage calculation relating to the alleged
5 overpayments under the Payroll Reimbursement
6 Agreements?

7 A. Based on the best information we have
8 at this time, yes.

9 Q. Okay. Did the Advisors ever seek
10 leave to file a prepetition claim arising from
11 any overpayments under the Payroll Reimbursement
12 Agreements?

13 A. I don't remember the specifics --
14 sorry, can you repeat the question? There are
15 legal terms that I want to make sure I get right.

16 Q. Sure. I don't mean to trick you at
17 all.

18 Do you understand that the damages
19 reflected on this page are called administrative
20 expenses because they allegedly arose after the
21 petition date?

22 A. Yeah. This is a postpetition claim
23 and we're only talking about postpetition
24 damages.

25 Q. Okay. Did the Advisors ever file a

NORRIS

prepetition claim?

A. I believe there were claims filed more as placeholders, but not specifically related to overpayments.

Q. Okay. So is it fair to say that to the best of your knowledge the Advisors never sought damages on account of prepetition claims arising under the Shared Services or Payroll Reimbursement Agreements?

A. Yeah, I think in one of our answers that you asked do we have a prepetition claim, I think the answer was -- it was under interrogatories or responses, however we said it there, and I would refer you there, but it was something to the extent of, "We don't deny" -- "We don't say we didn't have damages," it was, "There was never a claim admitted by the Court related to that."

Q. Okay. Let me see if I can try and characterize this document in a way that you think is fair.

A. Uh-huh.

Q. The starting point for the Advisors was to determine how much was paid under the

NORRIS

Payroll Reimbursement Agreements from the petition date until the end of December 2020; is that right?

A. Now, what we did is from the petition date through February 19th, 2021. And I broke it into three groups here until 11-30, because that's largely the period where we had been making payments or overpayments, the period of the two months of December and January and then the 19-day extension.

Q. Okay. So the first column is a subtotal of the second two columns; do I have that right?

A. Correct.

Q. And there's three pieces to it based on three different periods of time?

A. Yes.

Q. And the first period of time, the first line, the \$9 million number, that represents the total amount paid from the petition date until November 30th, 2020, correct?

A. The amount invoiced and paid by Highland's employees on behalf of us.

Q. Okay. And then the \$1.336 million

NORRIS

number is the amount that was paid for the two-month period December 1st, 2020, to January 31st, 2021, correct?

A. It would have been the amount billed or invoiced based on the previous amount. So it's not the amount paid, it's the amount billed based on the original employee.

Q. Did NPA or HCMFA pay any portion of the \$1.336 million?

A. I don't believe there were any payments in December and January. And that's...

Q. So that that \$1.336 million number is different than the \$9 million number above because it only represents what was invoiced as opposed to what was paid, correct?

A. Yes.

Q. Okay. And is the same true for the \$453,000 number near the bottom in the third period, is that moneys that were actually paid or is that moneys that were only invoiced?

A. Those were actually paid. That's the amount paid for the extension -- along with the extension period.

Q. Okay. And then from the amounts

NORRIS

invoiced and/or actually paid you deduct the estimated actual cost with the appropriate employees; do I have that right?

A. Yeah. I'm deducting the actual employees because that's what should have been billed. We should have reimbursed for actual cost of employees that were, one, providing investment advisory services and, two, that were dual employees. So these are the list, and you'll see the backup on the sheet that shows each individual employee. But that's the amount of their -- our estimate of their comp which comes just directly from Ms. Hendrix' file that you allowed us to use.

Q. Okay. So I'm looking at the total, the \$7.649 million. Do you see that?

A. I do.

Q. And am I correct that that represents the difference between the amounts invoiced and what the Advisors contend should have been invoiced based on the estimated actual cost for the appropriate employees?

A. Yeah, that 7.6 million represents -- I'm sorry, the difference -- the second line is

NORRIS

what you're saying, the second row of each is the amount that we should have been invoiced.

Q. Right. But the \$7.6 million at the bottom -- right -- is total overbilling for payroll reimbursement --

A. Yeah.

Q. -- from the bankruptcy filing until February 19th, 2021, is \$7.649 million approximately, correct?

A. That's right.

Q. And that number is derived by subtracting from the totaled invoiced amount for that period the estimated actual costs with appropriate employees, that second line in each period, correct?

A. Correct.

Q. Okay. But --

A. It's simple math.

Q. Right. That's all this is, is arithmetic, right?

A. It is. It's here are the employees using the data provided by Highland and adding up what was paid, which is this stagnant amount, and it's just -- so I'm not coming in here and we're

NORRIS

not -- this is not an expert analysis, it's literally just arithmetic.

Q. Okay. And I appreciate that. That's what I saw.

But that \$7.649 million is overstated by the \$1.336 million in the middle piece because that amount wasn't ever actually paid, right?

A. It wouldn't be overstated by the 1.33, it would be potentially the 264, which would have been -- that we hadn't paid. Right? So you're looking at the difference.

But your point is valid in that we aren't denying that there was something incurred in December and January, but we didn't pay because we believed we had been far exceeding the payments that were. And so -- yeah.

Q. Your damage calculation should be the difference between what you paid and what you think you should have paid; is that fair?

A. My understanding is you're demanding or still demanding those other payments and so that's part of the calculation.

Q. Okay. That's fair. But from your perspective, because you don't think that

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Highland is entitled to those payments, correct?

A. Not the amounts that are at the constant rate based on 2018 employee count.

Q. Okay. So if I took \$6.2 million from the first period and I added \$372,000, which is the net of the third period, and I added -- withdrawn. That's okay. You know what...

When was this prepared?

A. I believe it was last week.

THE WITNESS: Davor, I don't know if you have any other --

A. I believe it was last week. Finalized last week.

MR. RUKAVINA: I can get you the date, Mr. Morris, that he prepared it.

BY MR. MORRIS:

Q. Did you personally prepare it?

A. I did.

Q. And did you personally prepare it for this litigation?

A. I did.

Q. Okay. What information did you rely on to prepare this report?

A. I relied on the information that was

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provided by -- in the file that Davor provided you that has the payroll file that Ms. Hendrix' prepared, and I confirmed that that is an export from their payroll system. So that's the data.

There is one point I discussed with Mr. Collins, Brian Collins, regarding employee benefits. That's detailed in this support. So it's really the actual documents that came from the payroll system.

Q. And is everything behind this document, can it fairly be characterized as either the backup or the buildup to these numbers?

A. Yeah. And we provided that. You have it in other documents too.

Q. I think if we just scroll down to the next page, for example, you've got the buildup for each of the Advisors, right? You've got this -- this the buildup for NPA on the Payroll Reimbursement Agreement, correct?

A. Yeah, I guess if that's the word, "buildup." This is just the actual data and now it adds up to the front page. The front page is just literally summing the individual months and

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the period.

Q. Okay. That's what I mean by "buildup." That number in the lower right-hand corner, would we find that on the first page?

A. No. If you go to the next page I can tell you how you get to the numbers on the first page.

Q. Okay. Let's do that.

A. So the numbers at the top are -- sorry, the top orange numbers, this is HCMFA's. If you add up just the periods I have, this is the total monthly actual cost of these employees. You add up those months, just literally sum those up and they go to that time period on the front.

The next page is NexPoint Advisors. And if you go to the actual payments paid, that's the next to second orange row, 208,000, 416, 416. Oh, now on next page. Same thing here where it starts with 50,000, 100,000, 100,000 and goes down. That is the actual employees. And that is just calculated as arithmetic of what was their total compensation times the percentage allocation on Appendix B.

Q. Okay. Does this take into account

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services that Highland provided -- withdrawn.

I think in your answers earlier you acknowledge that some of the services provided by departing employees were subsequently provided by other Highland employees; is that generally fair?

A. I would say to a limited extent. We don't believe that there was -- yeah, say here provided by other Highland employees, yes, to a limited extent, or by Advisors employees. There is a number of things that departing individuals that we took on in-house.

Q. Okay. But this analysis doesn't take into account the value of any services that may have been picked up by Highland employees following the departure of the dual employees that are subject to the Payroll Reimbursement Agreements, correct?

A. Well, when you look at this, I think it does, because most of those employees were working -- were already listed here as front office employees. To my understanding, there were no front office employees hired from the petition date through the end of the Shared Services Agreement. We weren't hiring front

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office employees that then were providing services. So it's allocated these are the front office employees.

So, you know, John Poglitsch picked up and ran with Trey Parker's or, you know, other people pitched in and started doing things when someone had left.

Q. That happened or didn't happen?

A. It did happen. They would allocate -- you know, simple example: John Poglitsch who was the head of credit research under Trey Parker, CIO. When Trey left there was stuff that John did.

In addition, I mentioned earlier Joe Sowin, who was the portfolio manager, was added to the funds. He was an Advisor employee not an HCMLP employee. But most everything was filled with the existing front office employees.

Q. The front office employees of Highland, right?

A. Highlands and the Advisors.

Q. Okay.

A. There were a number of things that we had to begin doing on our own.

NORRIS

Q. Okay. But this analysis, I don't mean to wrestle with you, I think it's fairly simple based on what we're looking at here, this analysis doesn't take into account the services that were picked up by other Highland employees, does it?

A. Well, if those employees are listed on this list, it does, but if they're not, then that's where we say, "Hey, if there's someone else you said really started doing a true job that meets the degree of the agreement, we'd love to hear it. Right? We'd love to have good faith negotiation on what that looks like.

Q. Okay. And even for a guy like -- I'm going to mispronounce it -- Poglitsch, if he was allocated 29 percent under the agreement but now he's taking on some of Parker's role so that he's at 40 percent, this analysis wouldn't capture that, right?

A. We're using the percentages that were provided in the agreement. And, you know, maybe that's the difference between ours and Dave Klos's, he was adjusting the percentages, but -- but it does not have a change analysis.

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MR. MORRIS: Okay. Let's take just a short break. I may be done.

The time now is 5:24, let's come back really in six minutes at 5:30.

(A break was taken from 4:24 p.m. to 4:31 p.m.)

MR. MORRIS: Mr. Norris, on behalf of Ms. Winograd and myself, thank you for your time. We have no further questions. And I do intend to get you that backup document no later than Monday.

THE WITNESS: Thank you.

(TIME NOTED: 4:31 p.m.)

CERTIFICATE

STATE OF TEXAS)
)
COUNTY OF HARRIS)

I, LINDA RUSSELL, a Certified Court
Reporter within and for the State of Texas, do
hereby certify:

That DUSTIN NORRIS, the witness whose
deposition is hereinbefore set forth, was duly
sworn by me and that such deposition is a true
record of the testimony given by such witness.

I certify that review of the transcript by
the deponent was requested.

I further certify that I am not related to
any of the parties to this action by blood or
marriage; and that I am in no way interested in
the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this 4th day of March, 2022.



LINDA RUSSELL, Texas CSR #2965
Expiration Date: 4/30/2023

TSG Reporting, Inc.
Firm Registration No. 615
228 E. 45th Street, Suite 810
New York, New York 10017
(212) 702-9580

ERRATA SHEET FOR THE TRANSCRIPT OF:

CASE NAME: In re: Highland Capital Management, LP

DEP. DATE: March 4, 2022

DEPONENT: DUSTIN NORRIS

CORRECTIONS:

Pg.	Ln.	Now Reads	Should Read	Reason
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DUSTIN NORRIS

SUBSCRIBED AND SWORN BEFORE ME

THIS _____ DAY OF _____, 2022.

(Notary Public) MY COMMISSION EXPIRES: _____